



THE GLOBAL
FOOD DONATION
POLICY ATLAS

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PERU
**LEGAL
GUIDE**

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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INTRODUCTION

Purpose of this Legal Guide

Food loss and waste is one of the greatest food system challenges that we face today. An estimated one-third of food produced globally is ultimately lost or wasted along the supply chain;¹ this amounts to approximately 1.3 billion tons of food each year that ends up in the landfill.² Food loss or waste occurs at every stage of the food system: during the initial harvest due to low market prices, because of high labor costs and demand for perfect-looking produce; by grocery stores and restaurants over-estimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.³

These behaviors have significant environmental, economic, and social consequences: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,⁴ using roughly 28% of agricultural land⁵ and accounting for eight percent, or 70 billion tons, of total global greenhouse gas emissions.⁶ Collectively, this damage costs approximately \$940 billion per year.⁷ Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.⁸ The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.⁹

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, non-governmental organizations that recover surplus, wholesome food and redirect it to local beneficiary agencies (such as soup kitchens, shelters, and community pantries) to feed low-income, food insecure persons. As food insecurity, food loss and food waste have continued to rise, new, innovative models of food recovery have emerged around the world.

However, uncertainty surrounds the laws and regulations most relevant to food donation. To help address the most pressing questions, 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.¹⁰ This innovative partnership maps 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.

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.

This Legal Guide focuses on Peru, where one-third of the food that is produced, or 9 million tons of food, is lost or wasted each year,¹¹ while 3.1 million people were suffering from food insecurity prior to the novel coronavirus (COVID-19) pandemic.¹² FLPC and GFN, in collaboration with partners in Peru,¹³ developed this resource to help food donors, food banks, and other intermediaries (hereinafter collectively referred to as “food recovery organizations”) understand the relevant legal frameworks that impact food waste and donation efforts in Peru.¹⁴ This Legal Guide also serves as a resource for those in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Peru, this Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy

disincentives, and waste diversion laws that penalize food waste or require recovery. The extent to which Peru has developed and subsequently implemented these legal frameworks compared to other countries may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in Peru

Policies to prevent food loss and waste and promote food donation gain new importance when a country's socio-economic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Peru, which despite consistent expansion of its diverse and productive agricultural sector, continues to battle pervasive poverty, food insecurity, and economic instability. Between 2015 and 2017, 8.8% of the population was food insecure.¹⁵ Estimates reported in 2019 found that 20.5% of the population, or over 6.5 million people, lived below the poverty line.¹⁶ Such conditions have only worsened as a result of the COVID-19 pandemic. Reports from August 2020 found that Peru was leading the global economic crash with a 30.2% drop in gross domestic product (GDP) from the year prior.¹⁷

While the full extent of the pandemic's impact on food insecurity and hunger in Peru is still unknown, early studies suggest that it may be quite severe. According to the Institute of Peruvian Studies (*Instituto de Estudios Peruanos* or IEP), by May 2020 more than one-third of the Peruvian population had turned to community cooking (collective food preparation) to feed themselves and their families.¹⁸ By June 2020, Peru not only reported the highest number of virus cases per capita in the region, but the pandemic's impact revealed the need for more effective social safety nets to keep millions from slipping into poverty.¹⁹

WHILE THE FULL EXTENT OF THE PANDEMIC'S IMPACT ON FOOD INSECURITY AND HUNGER IN PERU IS STILL UNKNOWN, EARLY STUDIES SUGGEST THAT IT MAY BE QUITE SEVERE.

Before the pandemic, Peru demonstrated sensitivity to the population's hunger and food insecurity and pursued initiatives to improve these conditions. To address issues of food access, for example, the Multisectoral Commission on Food and Nutrition Security (*Comisión Multisectoral de Seguridad Alimentaria*)²⁰ developed the National Strategy for Food and Nutrition Security (*Estrategia Nacional de Seguridad Alimentaria*) (2013-2021)²¹ and the National Plan for Food and Nutrition Security (*Plan Nacional de Seguridad Alimentaria y Nutricional*) (2015-2021).²² Since both initiatives conclude in the coming year and given the unforeseen impact of the global pandemic, the national government is likely to enhance hunger prevention and food security efforts.²³

Peru by the Numbers

Population 31,915,000	Prevalence of Food Insecurity 3.1 million	World Bank Classification Upper middle income
Median age 29.1 years	Global Food Security Index 63.3	Human Development Index 0.759
GDP \$226.8 billion	GINI Index 42.8	FLW estimates 9 million tons
Poverty rate 20.5%	Food Sustainability Index N/A	

Source: The Global FoodBanking Network, Sept 2020.

Such efforts may include greater attention to food loss and waste, which has emerged as a recognized issue in recent years. Although there is no official food waste and loss data in Peru, reports suggest that the estimated

amount of food that is discarded—33% of food produced—could feed 2 million Peruvians.²⁴ The Food and Agriculture Organization of the United Nations (FAO) estimates that 42.9% of tomatoes, 40.8% of plantains, and 31.96% of potatoes are lost between production and distribution alone,²⁵ and 33% of fish is lost before it reaches markets, partly due to a lack of adequate storage on fishing vessels.²⁶ A limited study of on-farm post-harvest losses among farm households in Peru found that household education and the use of modern agricultural inputs, such as pesticides, herbicides, and/or fertilizers were among the most significant drivers of loss.²⁷ During the retail phase food is further wasted, with close to 120 million tons of solid organic waste generated daily in the Lima wholesale market alone.²⁸

ALTHOUGH THERE IS NO OFFICIAL FOOD WASTE AND LOSS DATA IN PERU, REPORTS SUGGEST THAT THE ESTIMATED AMOUNT OF FOOD THAT IS DISCARDED—33% OF FOOD PRODUCED—COULD FEED 2 MILLION PERUVIANS.

Recent legislative developments provide a foundation for addressing food loss and waste and for promoting greater food donation as a solution to food insecurity and hunger. In 2016, Peru adopted Law 30498, a law to promote the donation of food 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*) (hereinafter “Food Donation Law”).²⁹ The Food Donation Law offers procedural guidance and financial benefits for food donations in two distinct situations: (1) the donation of food that has lost commercial value but is still safe for human consumption; and (2) the donation of food (and other necessary goods and services) during “states of emergency” following natural disasters, provided the government confirms and explains the Law’s application to food donation in its official decree declaring a “state of emergency.”³⁰

In July 2019 the Peruvian government adopted Law 30988, a law to promote the reduction and prevention of food loss and waste (*Ley que Promueve la Reducción y Prevención de Pérdidas y Desperdicios de Alimentos*) (hereinafter “Law Against Food Loss and Waste”).³¹ This Law promotes coordinated, multistakeholder efforts to reduce and prevent food loss and waste at all stages of the food supply chain.³² While the Food Donation Law recognizes the relationship between food loss and waste and food donation, the Law Against Food Loss and Waste does not include any reference to food recovery or food donation. The regulation for the Law Against Food Loss and Waste, adopted in March 2020, however, accounts for this disconnect, featuring provisions that endorse greater food donation.³³

Peru has also engaged with regional and international efforts to reduce food loss and waste. In 2018 it launched a joint Program Framework with FAO (*Marco de Programación de País MPP 2018-2021*),³⁴ which seeks to develop a “sustainable food system and access to safe and nutritious food, preferentially for the most vulnerable populations,” among other goals.³⁵ The Ministry for Agriculture and Irrigation (*Ministerio de Agricultura y Riego* or MINAGRI), attended the First Latin-American Summit on Food Loss and Waste held in Bogotá, Colombia, on October 10-11, 2019. This signaled an increasing interest by governmental institutions in supporting actors from the public and private sectors to promote food rescue and recovery.

In addition to government support for reducing food loss and waste, private-sector actors have proven critical in promoting food recovery and donation, especially during recent events. The Peruvian Food Bank (*Banco de Alimentos Perú* or BAP), for example, was created in 2014 to redirect surplus food to food-insecure populations. In the past six years, BAP facilitated the donation of more than 16,162 tons of food, preventing over 686 tons of annual CO₂ emissions.³⁶ As of January 2020, BAP had recovered 434 tons of surplus food from Lima’s wholesale market, with monthly recovery increasing from 19 tons in July 2019 to 127 tons in December 2019. BAP more than tripled its impact during the early stages of the COVID-19 pandemic, serving 180,000 people in the first month alone.³⁷

As Peru responds to this rising demand and seeks long-term solutions to food loss and waste as well as food insecurity, relevant actors must recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide will provide an overview of Peru’s food donation legal framework and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF PERU'S RELEVANT LEGAL FRAMEWORK

The Constitution of Peru establishes a unitary but decentralized system of government.³⁸ The Constitution, the Basic Decentralization Law,³⁹ and the Demarcation and Territorial Organization Law⁴⁰ distribute administrative powers among the national, regional, and local levels. Food regulation is shaped primarily at the national level, where lawmaking power is allocated across a unicameral legislative branch, a Presidential executive branch, and a judicial branch. Regulatory authority is further delegated to the regional level through the Organic Law of Regional Governments, which establishes regions (24 departments and two special provinces, Callao and Lima) and provinces.⁴¹ At the local level, the Demarcation and Territorial Organization Law and Organic Law of Municipalities establish districts and, within those, populated centers (*centros poblados*).⁴² Populated centers are the smallest administrative units and are governed by municipal governments.

National legislation that concerns food loss, waste, and donation aligns with the government's obligations set forth in the Constitution, which is the primary source of law, along with international treaties signed and ratified by the Peruvian Congress. These texts are followed hierarchically by Organic Laws, Ordinary Laws, Legislative Resolutions, Legislative Decrees, Supreme Decrees, and Supreme Resolutions. Other legislative acts include ministerial resolutions, municipal ordinances, and other administrative acts by the executive branch. As explained below, food waste and donation are largely shaped through various national authorities, while regional and municipal governments have certain delegated authorities to supplement these policies or develop implementation plans within their respective jurisdictions.

Food Donation Law

In 2016, Peru adopted a Food Donation Law to facilitate and promote the donation of food that has lost commercial value but is still safe for human consumption (Chapter II) and to further incentivize donations during “states of emergency” following natural disasters (Chapter III).

In Chapter II, the Law explains the general model for food donation that applies under ordinary circumstances: donated food should be distributed to people in need for free either directly or through charities registered with the Tax Authority as recipient entities of donations.⁴³ Any person or legal entity can be a donor.⁴⁴ Donating entities must adhere to certain procedures, such as preserving the description and expiration date on any packaged food item, and donation-receiving entities are required to maintain records of donated foods and beneficiaries.⁴⁵ The General Directorate on Environmental Health and Food Safety (*Dirección General de Salud Ambiental e Inocuidad Alimentaria* or DIGESA) under the Ministry of Health (*Ministerio de Salud* or MINSA), ensures that these entities comply with relevant food safety requirements. The Law also clarifies the liability imposed on donors and recipient entities that are subject to these safety requirements, as discussed later in this Legal Guide.⁴⁶

At the time of the Law's adoption, it *promoted*, or encouraged, the donation of food that had lost commercial value but was still suitable for human consumption to qualifying institutions.⁴⁷ However, the Law stipulates that, beginning on the third year after its enactment, this voluntary suggestion would become a donation *requirement*. This requirement applies only to supermarkets and food storage facilities, or warehouses. Other supply chain

IN 2016, PERU ADOPTED A FOOD DONATION LAW TO FACILITATE AND PROMOTE THE DONATION OF FOOD THAT HAS LOST COMMERCIAL VALUE BUT IS STILL SAFE FOR HUMAN CONSUMPTION AND TO FURTHER INCENTIVIZE DONATIONS DURING “STATES OF EMERGENCY” FOLLOWING NATURAL DISASTERS.

actors are still only encouraged to donate.⁴⁸ While this donation requirement should have taken effect as of 2019, at the time of writing in 2020, the Ministry of Social Development and Inclusion (*Ministerio de Desarrollo e Inclusión Social* or MIDIS) had not finalized enabling regulations for this obligation.⁴⁹ Accordingly, there are no formal procedures for compliance or legal consequences for breaching the Law’s donation requirement.

Apart from the donation requirement, the Law seeks to incentivize food donations through the provision of several tax benefits, discussed in detail in the “Tax Incentives” section of this document. Tax benefits are only available for donations made to donation-receiving entities, *i.e.*, any public or private nonprofit organization that is registered as such with the government tax authority (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT)).⁵⁰ In 2017 the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas* or MEF) adopted regulations detailing the application of these benefits for donations made under Chapter II as well as those made under emergency situations, pursuant to Chapter III.⁵¹

As noted, Chapter III of the Food Donation Law introduces a special regime for donation of free goods and services made during a “state of emergency” following a natural disaster. Chapter III further incentivizes donation during and immediately following a crisis. To do so, the Law introduces specific tax benefits and documentation requirements that apply to donated goods only during a government-declared “state of emergency” resulting from a natural disaster. The “goods” subject to Chapter III may include food and other basic necessities such as medicine; however, the government needs to explicitly detail the application of the Law to food or other items when issuing a “state of emergency” decree.⁵²

The potential for Chapter III to significantly bolster food donations during times of emergency is uncertain, as the donation procedure and tax benefits outlined in Chapter III largely mirror those set forth for nonemergency food donations under Chapter II. At the time of writing, the Peruvian government had issued a decree declaring a “state of emergency” in response to the COVID-19 pandemic,⁵³ but it had not invoked the application of the Food Donation Law’s special donation regime. As a result, the potential for this regime to increase food donations during a public health crisis is untested. Donors may still claim the tax benefits set forth under Chapter II of the Food Donation Law for qualifying food donations, but they cannot claim the additional benefit detailed in Chapter III, discussed later in this Legal Guide.

Law Against Food Loss and Waste

In July 2019, the Peruvian government significantly advanced its efforts to reduce food loss and waste, with the adoption of the Law Against Food Loss and Waste. The Law’s purpose is to reduce and prevent food loss and waste at all stages of the food supply chain⁵⁴ through coordinated efforts among supply chain actors.⁵⁵ Article 3 of the law tasks MINAGRI with strengthening good practices for handling food; supporting the implementation of food loss and waste reduction projects and initiatives at the national, regional, and local levels; and coordinating these efforts with members of the private sector and civil society.⁵⁶ The Law Against Food Loss and Waste does not specifically mention food donation among these objectives.

IN JULY 2019, THE PERUVIAN GOVERNMENT SIGNIFICANTLY ADVANCED ITS EFFORTS TO REDUCE FOOD LOSS AND WASTE, WITH THE ADOPTION OF THE LAW AGAINST FOOD LOSS AND WASTE. THE LAW’S PURPOSE IS TO REDUCE AND PREVENT FOOD LOSS AND WASTE AT ALL STAGES OF THE FOOD SUPPLY CHAIN.

However, the Law’s enabling regulations explicitly endorse food donation made to qualified receiving entities among the strategic actions to prevent food loss and waste.⁵⁷ These regulations were approved in March 2020 after several months of consultation with relevant stakeholders,⁵⁸ and ultimately seek to reconcile food donation efforts with food loss and waste prevention efforts. For example, the regulations call for the creation of a Task Force within the Multisectoral Commission on Food and Nutrition Security to create guidelines on food and nutrition security in accordance with both the Law Against Food Loss and Waste and the Food Donation Law.⁵⁹

At the time of this writing, the impact of this Task Force and the Law Against Food Loss and Waste on food donation efforts generally remained unknown. Adopting regulations that reiterate the relationship between this legislation and the Food Donation Law, however, may help strengthen Peru's food recovery legal framework.

Food Safety Act and Regulations

THE FOOD SAFETY ACT PROMOTES A PREVENTATIVE AND COMPREHENSIVE APPROACH TO GUARANTEEING THE SAFETY OF FOOD FOR HUMAN CONSUMPTION.

Food donations also fall within the scope of Peru's food safety law regime, which was modernized in 2008 with the adoption of its Food Safety Act (*Ley de Inocuidad de los Alimentos*)⁶⁰ and its enabling regulation.⁶¹ The Food Safety Act promotes a preventative and comprehensive approach to guaranteeing the safety of food for human consumption.⁶² The law sets forth rights and obligations of producers and consumers, guaranteeing the right of everyone to eat safe food and receive protection against foods that are contaminated, adulterated, falsified, or otherwise not suitable for human consumption.⁶³ It also promotes the principle of social responsibility, holding all commercial actors responsible for ensuring that only safe and healthy food is produced.⁶⁴

The Food Safety Act establishes the government structures for overseeing food regulation, and allocates responsibility among several national agencies as well as regional authorities.⁶⁵ The Food Safety Act also created a Permanent Multisectoral Commission on Food Safety (*Comisión Multisectorial Permanente de Inocuidad Alimentaria* or COMPIAL) to propose national policies for food safety.⁶⁶ COMPIAL includes officials from various ministries, including the Ministry of Health (*Ministerio de Salud* or MINSA), and is tasked with the responsibility of proposing national policies for food and feed safety.

Peru's General Health Law (*Ley General de Salud*),⁶⁷ the Regulation on Food and Beverage Safety Oversight and Control (*Aprueban el Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas*),⁶⁸ and the Health Norm for the Storage of Foods for Human Consumption (*Norma Sanitaria para el Almacenamiento de Alimentos Terminados destinados al Consumo Humano*)⁶⁹ further establish food safety principles in accordance with the international *Codex Alimentarius*, of which Peru has been a member since 1963.⁷⁰ A component of DIGESA proposes and coordinates technical information necessary for developing food safety policy; establishing norms to implement its technical proposals; and overseeing programs and plans for food safety in the production, manufacturing, and commercialization of industrially produced foods.⁷¹

Other National Law

While the aforementioned laws provide the most direct regulation of food recovery and donation, other national laws and programs apply to food safety, health, and security. For example, the Labeling Law (*Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados*)⁷² and Technical Rule 209.038 (*Norma Técnica Peruana NTP 209.038*)⁷³ control the date labels that are affixed to packaged food items. The Food Donation Law also introduces a liability scheme that expands upon the standard rights and protections set forth in the Consumer Protection and Defense Code (*Código de Protección y Defensa del Consumidor*).⁷⁴ Finally, provisions in the Income Tax Law (*Texto Único Ordenado de la Ley del Impuesto a la Renta*)⁷⁵ and the General Sales Tax Law (*Texto Único Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo*)⁷⁶ provide benefits to food donors, as discussed later in this Legal Guide.

Municipal Law

Local governments in Peru have the legal authority to supplement national laws within the scope of their jurisdiction and delegated power. In the context of the Food Safety Law, for example, municipalities are

expressly granted jurisdiction over prepared foods, transport, retail, and street foods.⁷⁷ Municipalities have also developed their own initiatives to tackle food loss and waste. The Network of Municipalities on Food Issues (*Red de Municipalidades en Temas Alimentarios*)—which includes representatives from the municipalities of Arequipa, Concepción, Huancayo, and Lima—is working to improve the management of wholesale markets and propose relevant national-level legislation.⁷⁸ Although the network has only convened a few times,⁷⁹ its proposal for such legislation is a promising initiative given the amount of food loss cited above.

The municipality of Lima is part of the Milan Urban Food Policy Pact, an international agreement among cities willing to develop sustainable food policies. Launched on October 15, 2015, at EXPO by the mayor of Milan, the Pact has been signed by over 130 cities around the world.⁸⁰ The Milan Pact’s main goal is to establish a governance framework for developing local policies fostering equitable and sustainable food systems by covering six thematic areas: local food governance; social and economic equity; sustainable diets and nutrition; food production; supply and distribution; and food waste and loss. In this vein, Lima developed its own Food Charter (*Carta Alimentaria de Lima Metropolitana*). The first goal of this Charter is “to develop sustainable, inclusive, resilient, safe, and diversified food systems, to ensure healthy and accessible food for everyone within a rights-based action framework, with the goal of reducing food waste and preserving biodiversity, and at the same time, mitigate and adapt to climate change effects, contributing to poverty eradication and to food security.”⁸¹

Lima also formed a food waste taskforce and established a composting center for managing biomass waste from markets run by the municipality.⁸² The goal of the center is to turn organic waste into compost while also preserving the environment, goals in line with the Solid Waste Management Decree.⁸³ According to FAO, which supported the endeavor, the amount of organic waste disposed of in the landfill and city drainage system has significantly decreased as a result of this project.⁸⁴ The cities of Arequipa, Junín, and Piura will also receive similar assistance from FAO.⁸⁵

LEGAL ISSUES RELEVANT TO FOOD DONATION

Food Safety for Donations

A key barrier to the donation of surplus food 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.

In Peru, there is still uncertainty surrounding food safety rules for food donation, despite a robust food safety legal framework comprised of the Food Safety Act, the General Health Law, and corresponding regulations. Together, these authorities offer food safety standards that impliedly or explicitly extend to food donation. The Food Safety Act states that, consistent with the *Codex Alimentarius*, altered, contaminated, adulterated, or falsified foods are not suitable for human consumption, and that everyone has the right to receive protection against the production, importation, or free transfer of such foods.⁸⁶ The Food Safety Act also enumerates the obligations of suppliers to fulfil this right as well as the responsibilities of the relevant health authorities to oversee compliance with marketing of “safe” food.⁸⁷ Food is considered “safe” only when it is not harmful to health, is qualified as suitable for consumption by the competent legal authority, and does not cause harm to the consumer when prepared and/or consumed as intended.

Chapter V of the General Health Law further explains that it is strictly forbidden to import, manufacture, transfer free of charge, and distribute altered, contaminated, adulterated, or falsified food.⁸⁸ The Law calls for the regulation of sanitary conditions to ensure that food is suitable for human consumption, consistent with the standards approved by the relevant authority.⁸⁹ Several regulations elaborate on the General Health Law's provisions. For example, the Regulation on Food and Beverage Safety Oversight and Control (*Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas*)⁹⁰ unifies and harmonizes relevant food safety standards. The Health Norm for the Storage of Finished Foods for Human Consumption (*Norma Sanitaria para el Almacenamiento de Alimentos Terminados destinados al Consumo Humano*) details this Regulation as well as the Regulation of the Food Safety Act.⁹¹

While these authorities do not use the term “food donation” or feature a separate food donation section, these frameworks clearly convey that the protections set forth apply to donated food that is offered free of charge.⁹² The Regulation of the Food Safety Act confirms this interpretation, explicitly acknowledging that food donation operations are within the scope of these frameworks. Articles 15 and 16 confirm that receiving entities are subject to food safety monitoring and surveillance by the relevant authority.⁹³ This oversight is explained in the Food Donation Law, which tasks DIGESA with supervising these receiving entities and ensuring that they are registered and only handle food that is safe for beneficiaries.⁹⁴

The Food Donation Law reiterates the general food safety standard established in the Food Safety Act, the General Health Law, and accompanying regulations. Article 1 of the law promotes the donation of food that is still “suitable for human consumption” (i.e., food that meets quality requirements) even though it has lost commercial value. However, the Food Donation Law does not explicitly reference the Food Safety Act, its regulation, or the General Health Law. Nor does it refer to specific food safety rules. As a result, food donors may still face some challenges discerning the proper standards with which to comply.

Date Labeling

Date labels affixed to food products are a major driver of food waste and obstacle to food donation. Most food donors and food recovery organizations are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the “expiration date” has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its “peak quality.” Nevertheless, global trends indicate that consumers generally confuse date labels as indicators of safety rather than quality. In the United Kingdom, for example, researchers found that consumers discarded about 22% of food that they could have eaten due to confusion over date labeling. Similarly, 84% of Americans report that they throw away food after the expiration date passes due to safety concerns, even if there is a minimal risk of foodborne illness at that time.⁹⁵

There remains some uncertainty surrounding the appropriate meaning and application of date labels in Peru. The national Labeling Law requires that all perishable packaged foods feature an “expiration date” (*fecha de vencimiento*),⁹⁶ a requirement that is further elaborated in Technical Rule 209.038.⁹⁷ In 2009, the National Institute for the Defense of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* or INDECOPI) adopted the Technical Rule to align with the *Codex Alimentarius*, of which Peru is a member.⁹⁸

However, Peru's Technical Rule fails to clearly define the “expiration date” as a safety-based label, consistent with the 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. This

update to the *Codex Alimentarius* introduced a dual labeling scheme, explaining that “expiration date” is usually a safety-based label, whereas “best before” (“*consumir preferentemente antes de*”) is a term that conveys quality.⁹⁹ Peru’s Technical Rule, does not adhere to this scheme, but instead describes the “expiration date” as if it was a quality-based label. Specifically, the rule defines “expiration date” as the last date on which the product is fully marketable and maintains its quality attributes, after which the food may still be entirely satisfactory.¹⁰⁰ This explanation, as well as the suggested language of “best before” to accompany the date, seems to suggest that the “expiration date” is not an indication of food safety in Peru.

The Technical Rule creates further confusion by introducing a “use by” date (“*fecha límite de utilización o fecha límite de consumo recomendada o fecha de caducidad*”) that is entirely distinct from the “expiration date.”¹⁰¹ This distinction is inconsistent with the *Codex Alimentarius* General Standard, which designates the term “use by” to convey the “expiration date.”¹⁰² Peru’s Technical Rule defines this “use by” date as the last date on which the food product will contain the quality attributes that consumers would normally expect, and the last date on which the food is marketable.¹⁰³ This explanation suggests that, like the distinct “expiration date,” this “use by” date is also intended to convey quality rather than safety. The Technical Rule does not further elaborate on the proper application of this “use by” label or whether it may be applied in conjunction with or in place of the “expiration date” label.

The existing legal framework does not clearly explain the application of these dates in the context of food donation, as neither the Labeling Law nor Technical Rule 209.038 explicitly references food donation and the Food Donation Law fails to offer clarification. The Food Donation Law permits the donation of food that meets quality requirements and is suitable for human consumption at the time of donation even though it may no longer be marketable.¹⁰⁴ Based on the Technical Rule’s definition of the “expiration date,” this provision seems to allow the donation of certain past-date food that is still safe to eat. A provision in the MEF Regulation of the Food Donation Law, however, only allows donors to claim a deduction under the Income Tax Law for donations made to receiving entities *before* the “expiration date.”¹⁰⁵ These Regulations do not address the uncertainty arising from the Technical Rule’s definition of “expiration date,” and do not impose any penalty for donating food after the “expiration date” has passed.

The relevance and meaning of date labels in the context of food donation may be explored further as the national government develops a framework for the Food Donation Law’s donation requirement. The draft regulation for this requirement, published in August 2019 by MIDIS, placed an express prohibition on the donation of processed foods within 15 days of their expiration date.¹⁰⁶ The draft regulation also reiterated the responsibility on donors, receiving entities, and beneficiaries to not donate, distribute, or consume, respectively, food that is past due.¹⁰⁷ Without a clear date labeling regime that states whether the affixed date conveys safety or quality, such a prohibition may result in unnecessary food waste. As noted above, however, at the time of this writing, MIDIS had not finalized these regulations.

Liability Protection for Food Donations

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. This fear is particularly heightened when the applicable law provides for “strict liability” (i.e., a donor or food recovery organization that did not act maliciously or intend to inflict harm may still be held legally and financially responsible for any resulting injury). Other countries, including Argentina and the United States, have established protections for both food donors and food recovery organizations to limit the likelihood that these actors will be held responsible for harm.

National law in Peru does not provide comprehensive liability protections for food donors and food recovery organizations; however, the Food Donation Law places some limits on the potential liability that these actors might otherwise face pursuant to the Consumer Protection and Defense Code (*Código de Protección y Defensa del Consumidor*).¹⁰⁸ The Consumer Protection and Defense Code imposes liability based on a consumer-supplier relationship, with suppliers bearing exclusive responsibility for the suitability and quality of products, including

food.¹⁰⁹ The Food Safety Act, discussed earlier in this Legal Guide, recognizes this obligation of suppliers and the rights of consumers to seek damages in the event that food is altered, contaminated, adulterated, or otherwise declared unfit for human consumption.¹¹⁰ Accordingly, any claim of harm brought by a consumer would generally trigger the application of civil and administrative responsibilities set out in the Civil Code.

The Food Donation Law creates an exception to this traditional liability scheme and limits the scope of liability for both food donors and food recovery organizations based on the chain of custody. Article 6 of the Food Donation Law explains that donors who provide food to registered food-receiving entities are not considered “suppliers” under the Consumer Protection and Defense Code.¹¹¹ It further explains that donors are only held civilly or criminally liable for damages if there is proof of gross negligence or fraud associated with the delivery of the donated food. The burden of responsibility on donors shifts to the receiving entity once this latter actor assumes possession of the donation. Food recovery organizations receiving the donation retain responsibility for the donated food until the donation is distributed to the subsequent intermediary or final beneficiary. Similar to donors, these receiving entities will only be civilly or criminally liable for damages upon proof of gross negligence or imputable fraud.

Unlike the liability protection laws in Argentina, this scheme does not include a presumption of good faith on the part of donors or food recovery organizations. Nor does the Food Donation Law specify the types of violations that may give rise to liability claims. Donors and food recovery organizations should therefore take care to comply with all relevant food safety standards and the donation procedures set forth in the Food Donation Law. This includes maintaining proper records of the donation and delivering the donation to qualified receiving entities (i.e., only those public or private nonprofit organizations that have registered with SUNAT and whose objective is to recover food in good condition, thus avoiding its waste or misuse, and to directly distribute it free of charge to those in need or through charitable and social assistance institutions).¹¹²

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food banks and intermediaries provide jobs or sponsor community development, while recipients of donated food are able to spend limited financial resources on other basic goods and services. But food donation can also be expensive, as food donors must allocate time and money to glean, package, store, and transport surplus food that otherwise would be discarded at no cost. As a result, it is often easier and less expensive for farmers, businesses, and private individuals to throw away food instead of donate it. Some countries are addressing this issue by offering tax incentives and removing financial barriers to food donation.

Incentives

Tax incentives can significantly support food donation and help reduce food loss and waste. For example, corporate donors may be more likely to donate surplus food if they receive a charitable deduction to offset the cost of transportation and logistics. Peru’s Food Donation Law incentivizes food donation through tax benefits for donors, both under normal circumstances (Chapter II) and “states of emergency” following natural disasters (Chapter III).

Chapter II, article 7 of the Food Donation Law, for example, updates article 37 of the Income Tax Law to provide a deduction of up to 10% of the donor’s third category net income (i.e., corporate income).¹¹³ For the donation of food that has lost commercial value but is still suitable for human consumption,¹¹⁴ the deduction allowed for tax purposes, including the necessary expenses incurred (e.g., transportation costs), is up to 1.5% of the taxpayer’s net income. Once the deduction exceeds 1.5% of the taxpayer’s net food sales for the fiscal year, however, the taxpayer can no longer claim donations as a deductible expense. According to SUNAT, once a supermarket or

food storage facility subject to the Food Donation Law's requirement reaches the 1.5% limit, they may discard rather than donate the surplus food and still claim a loss.¹¹⁵ This claim requires prior communication with SUNAT and approval from a notary or judge.¹¹⁶

The MEF Regulation of the Food Donation Law elaborates on the deduction, updating article 21 of the Regulations of the Income Tax Law to clarify that deductions are only available for donations made to public or private entities that are registered with SUNAT, including those that are committed to "assistance or social welfare."¹¹⁷ These receiving institutions must register with SUNAT every three years.¹¹⁸ Donations may also be made to State-accredited international organizations and other nonprofit entities or dependents of the National Public Sector.¹¹⁹

The MEF Regulation further enumerates the documentation required to claim this deduction, both on the part of the donor and the receiving institution. Food-receiving institutions, for example, must issue a receipt of donation according to directions from SUNAT.¹²⁰ Donors must also maintain records of the donation, ensuring, as noted above, that donations are made prior to the expiration date or within a reasonable time for use;¹²¹ the donated food must also be suitable for human consumption.¹²²

In addition to these tax benefits, free food donations are exempt from the market value rules set forth in article 32 of the Income Tax Law, which could lead to over- or undervaluation.¹²³ As discussed below, qualifying donations are also exempt from the General Sales Tax (*Ley del Impuesto General a las Ventas* or IGV).¹²⁴

While Chapter III of the Food Donation Law provides for tax benefits that largely mirror those available to qualifying food donations under Chapter II, the emergency donation regime offers an additional tax benefit not provided for under nonemergency situations. During a "state of emergency," Chapter III explains that goods delivered for free to qualifying entities do not constitute taxable income for purposes of calculating a business pro rata tax credit under the Income Tax Law.¹²⁵ As previously noted, this benefit only applies to food donations if the government declares a "state of emergency" and confirms this application in the official emergency decree.

Barriers

While certain tax schemes may encourage food donations, they may also stand as potential deterrents. In many countries the value-added tax (*Ley del Impuesto al Valor Agregado* or VAT), for example, presents a financial barrier to donating food. The VAT is levied on goods at each stage of the supply chain, often through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good, whereas the VAT credit is the amount invoiced to the VAT-registered business upon its purchase.

Taxpaying entities are generally entitled to recover the VAT credit that is invoiced, thereby offsetting the output VAT previously incurred. However, when a country determines that donating food is not a taxable event, as is the case in Argentina, a donor may not be able to recover the VAT credit on the donated goods. By contrast, the taxpayer may be entitled to the VAT credit on food that is thrown away. When such a tax scheme applies, taxpayers are likely to perceive food donation as a less desirable option.

In Peru the VAT is known as a General Sales Tax (*Ley del Impuesto General a las Ventas* or IGV), and generally applies at a rate of 16% with 2% added as part of the Municipal Promotion Tax (*Impuesto de Promoción Municipal*).¹²⁶ Prior to Food Donation Law's adoption, the IGV created a potential barrier to food donation, as the existing framework did not permit food donors to recover the IGV credit on donated food. Under Chapter II of the Food Donation Law, however, Peru removed this deterrent, clarifying that donors may recover the IGV credit on donations made (free of charge) to qualifying organizations that are registered with SUNAT as donation-receiving entities.¹²⁷ This permission is executed through an amendment to article 2 of the Single Order Text of the General Sales Tax and Selective Consumption Tax Law.¹²⁸

Similarly, in the event of a government-declared “state of emergency” following a natural disaster, Chapter III of the Food Donation Law extends this VAT exemption to all goods and services identified in the government’s emergency decree. Regardless of whether the government invokes the application of this emergency donation regime, qualifying food donations are not considered as taxed sales for the purpose of the IGV Law, and donors are still eligible to claim the IGV credit, pursuant to Chapter II of the Law.

Donation Requirements or Food Waste Penalties

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. The Food Donation Law contains a donation requirement for certain actors, which should have gone into effect in August 2019, i.e., three years after the Law’s enactment. This requirement is featured in the Law’s fifth final complementary provision, and prohibits all food stores and supermarkets from discarding or destroying food that meets safety and other conditions for donation as set forth in Chapter II of the Law.¹²⁹ This provision does not extend to other actors of the food supply chain such as restaurants or consumers.

As of November 2020, however, this donation requirement was not in effect, as MIDIS had not yet finalized enabling regulations. The Food Donation Law tasks MIDIS with developing a regulatory framework setting out the process for monitoring and enforcing the donation requirement.¹³⁰ In August 2019 MIDIS developed a draft resolution for this purpose. The resolution was subsequently made available for public comment,¹³¹ but it remained in draft form at the time of this writing. Accordingly, the Peruvian government has not enabled donors to comply with this requirement and has not imposed any sanctions or penalties for noncompliance.

Government Grants and Incentives

Grants and incentive programs funded at the national or local levels 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. For example, government grants can help food donors and food recovery organizations acquire equipment and resources necessary for recovering, storing, processing, and transporting food for donation. Government funding can also support new innovations and emerging technologies that make food donation more efficient and sustainable. “Under the Law Against Food Loss and Waste, MINAGRI is tasked with promoting food loss and waste-reduction programs and activities, consistent with its programmatic authority and budget. [cite: Law Against Food Loss and Waste, art. 3.] The Regulation for the Law further elaborates on these programs and projects, directing the government to fund innovation in this space or help promote opportunities for financing. [cite (same as FN 33): See Decreto Supremo No. 003-2020-MINAGRI, Decreto Supremo que Aprueba el Reglamento de la Ley que promueve la reducción y prevención de pérdidas y desperdicios de alimentos, Primera Disposiciones Complementarias Finales, marzo 13, 2020, El Peruano [E.P.], <https://busquedas.elperuano.pe/download/full/4ns4FMzrKENAIaL7M38Q6W>.] Neither the Law nor Regulation provide additional details on these funding opportunities.”

Miscellaneous

In addition to the laws addressed in the above sections, other national or local laws and policies may impact food donation in Peru. For example, the Law that Promotes the Development of Agricultural Producers’ Markets (*Ley 29676, Ley de Promoción del Desarrollo de los Mercados de Productores Agropecuarios*), the regulations for which were adopted in 2020, calls for the promotion of more sustainable agricultural practices and greater access to markets for peasant and rural communities.¹³² While the recent regulations do not explicitly reference

food loss, waste, recovery, or donation, successful implementation of the Law's objectives may involve coordination with the frameworks discussed in this Legal Guide.

CONCLUSION

This Legal Guide identifies Peru's current laws, policies, and programs related to food waste or food donation. While the national government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity can provide an additional social safety net. The government of Peru has recently adopted legislative and policy changes to promote greater food donation and reduce food loss and waste. Among the most recent developments are the adoption of the Food Donation Law, which promotes food donation, and the enactment of the Law Against Food Loss and Waste, which seeks to prevent food loss and waste. If implemented fully and in coordination with each other, these laws may help resolve issues pertaining to food safety, date labeling, liability protection, and tax incentives within the context of food donation. These laws may also provide a comprehensive framework in which Peru may advance food donation as a solution to both food insecurity and food loss and waste.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for dialogue about food loss and waste prevention and the value of food recovery to Peru's food security, economic stability, and environmental sustainability. A separate document produced under the Global Food Donation Policy Atlas sets forth policy recommendations specific to Peru to contribute to this discussion. In the meantime, food donors and food recovery organizations should take into account the laws, policies, and legal issues discussed in this Legal Guide when donating food or facilitating the distribution of donated food to those in need. To better understand the regulation of food donation in Peru, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

ENDNOTES

- ¹ FOOD & AGRIC. ORG. OF THE U.N., GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), <http://www.fao.org/3/a-i2697e.pdf>.
- ² *Id.*
- ³ HARV. L. SCH. FOOD L. & POL'Y CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016), https://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf.
- ⁴ FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES: SUMMARY REPORT 6 (2011), <http://www.fao.org/3/i3347e/i3347e.pdf>.
- ⁵ *Id.*
- ⁶ FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015), <http://www.fao.org/3/a-bb144e.pdf>.
- ⁷ *Id.*
- ⁸ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2019: Safeguarding Against Economic Slowdowns and Downturns* 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf>. This number has likely increased due to the novel coronavirus (COVID-19) pandemic. Projections indicate that the crisis may add between 83 and 132 million people to the total number of undernourished in the world in 2020. FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2020: Transforming Food Systems for Affordable Healthy Diets* 3 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf>.
- ⁹ G.A. Res. 70/1 at 22 (Oct. 21, 2015) (“By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.”).
- ¹⁰ 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.
- ¹¹ *Más del 33 % de los alimentos producidos al año en Perú se descompone*, LA REPÚBLICA (July 3, 2019), <https://larepublica.pe/sociedad/2019/07/03/peru-mas-del-33-de-los-alimentos-producidos-al-ano-se-descompone-debido-al-mal-uso-de-la-cadena-de-frio-desnutricion>; *En el Perú se desperdician 9 millones de toneladas de alimentos al año*, AGENCIA PERUANA DE NOTICIAS (ANDINA) (Sept. 9, 2019), <https://andina.pe/agencia/noticia-en-peru-se-desperdician-9-millones-toneladas-alimentos-al-ano-766021.aspx>.
- ¹² FOOD & AGRIC. ORG. OF THE U.N., ET AL., *Panorama de la seguridad alimentaria y nutricional en América Latina y el Caribe 2018* 8 (2018), <http://www.fao.org/3/CA2127ES/CA2127ES.pdf>.
- ¹³ FLPC would like to express its gratitude to Banco de Alimentos Peru (BAP) for its contribution to this Legal Guide, as well as many other NGOs, businesses, and government agencies that shared input with the FLPC team.
- ¹⁴ FLPC and GFN recognize that the legal and policy landscape relevant to preventing food loss and waste and promoting food donation is changing rapidly. Therefore, the contents of this Legal Guide reflect the state of the landscape at the time of drafting (January to August 2020).
- ¹⁵ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *supra* note 11 at 6.
- ¹⁶ Defined as having a lower spending rate than the cost of a basic basket including food and nonfood items. INEI (Instituto Nacional de Estadística e Informática), *Perú: Perfil de la Pobreza por Dominios Geográficos, 2008-2018* 11 (2019), https://www.inei.gov.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1699/libro.pdf.
- ¹⁷ John Quigley, *Peru Leads Global Economic Crash With 30.2% Quarterly Drop*, BLOOMBERG (Aug. 20, 2020), <https://www.bloomberg.com/news/articles/2020-08-20/peru-leads-regional-economic-crash-with-30-2-quarterly-drop>.
- ¹⁸ *Action Against Hunger warns of rising hunger in Latin America due to COVID-19 pandemic*, ACTION AGAINST HUNGER (July 17, 2020), <https://www.actionagainsthunger.org/story/action-against-hunger-warns-rising-hunger-latin-america-due-covid-19-pandemic>.
- ¹⁹ Mitra Taj and Anatoly Kurmanav, *Virus Exposes Weak Links in Peru's Success Story*, THE NEW YORK TIMES (June 12, 2020), <https://www.nytimes.com/2020/06/12/world/americas/coronavirus-peru-inequality-corruption.html>.
- ²⁰ This government body was created in 2002 with participation of regional and municipal governments and relevant stakeholders to address food insecurity “as a result of failures in the provision system.” Decreto Supremo No. 118-2002-PCM, Decreto Supremo Crea la Comisión Multisectoral de Seguridad Alimentaria, noviembre 13, 2002, http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/07C6C04AADB0A8EA05257EEA006CE638/%24FILE/DS_118_2002.pdf.
- ²¹ MINISTERIO DE AGRICULTURA Y RIEGO [MINAGRI], ESTRATEGIA NACIONAL DE SEGURIDAD ALIMENTARIA 2013-2021, <https://www.minagri.gob.pe/portal/download/pdf/seguridad-alimentaria/estrategia-nacional-2013-2021.pdf>.
- ²² See MINAGRI, *Plan Nacional de Seguridad Alimentaria y Nutricional 2015-2021*, DS 008-2015-MINAGRI 23 (2015) (“Línea de acción 1.4.1: Promover mecanismos para la reducción de pérdidas postcosecha y merma en la cadena de valor de productos agropecuarios e hidrobiológicos.”). <https://www.minagri.gob.pe/portal/download/pdf/seguridad-alimentaria/plan-acional-seguridad-2015-2021.pdf>.
- ²³ The authors of this Legal Guide recognize that the COVID-19 pandemic has significantly altered the narrative of global hunger, food insecurity, and food loss and waste. The specific programs adopted at the national and municipal levels, and the support from private actors to mitigate these issues during the crises, however, are generally outside the scope of this Legal Guide. For more information about how governments can support food donation operations during the global pandemic, please see FLPC and GFN’s publication, HARV. L. SCH. FOOD L. & POL’Y CLINIC & THE GLOBAL FOODBANKING NET., STRENGTHENING FOOD DONATION OPERATIONS DURING COVID-19: KEY ISSUES AND BEST PRACTICES FOR GOVERNMENTS AROUND THE GLOBE (2020), <https://www.foodbanking.org/wp-content/uploads/2020/06/Global-Food-Donation-Policy-Atlas-COVID19-Issue-Brief.pdf>.
- ²⁴ Asia Sherman, *Peru to regulate food loss and waste along supply chain*, FOOD NAVIGATOR-LATAM.COM (Dec. 2, 2019), foodnavigator-latam.com/Article/2019/12/02/Peru-to-regulate-food-loss-and-waste-along-supply-chain#.
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- ²⁶ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food and Agriculture 2019. Moving forward on food loss and waste reduction*, 35 (2019), <http://www.fao.org/3/ca6030en/ca6030en.pdf>.
- ²⁷ *Id.* at 28, 31.
- ²⁸ See, e.g., Empresa Municipal de Mercados S.A. (EMMSA), *Reporte estadístico semanal – EMMSA. Semana del 30 de Noviembre al 06 de Diciembre* (2019), <http://www.emmsa.com.pe>; see also Selene Rosales, *Pérdida de alimentos: supera el 40% en tomate y banano en Perú, según la FAO*, GESTIÓN, (Sept. 5, 2019), <https://gestion.pe/peru/perdida-de-alimentos-supera-el-40-en-tomate-y-banano-desde-el-cultivo-hasta-distribucion-noticia>.
- ²⁹ Ley No. 30498, Ley Que Promueve La Donación de Alimentos y Facilita el Transporte de Donaciones en Situaciones de Desastres Naturales, agosto 8, 2016, EL PERUANO [hereinafter “Food Donation Law”], <http://www.leyes.congreso.gob.pe/Documentos/Leyes/30498.pdf>.
- ³⁰ At the time of writing amidst a global pandemic, the Peruvian government had not invoked the application of the Food Donation Law in its declaration of the “state of emergency.” As discussed in the companion Policy Recommendations, this may be due to uncertainty surrounding the emergency situations in which

the Law applies or a narrow interpretation of “natural disaster.” Although the government did not invoke the application of the Food Donation Law, the Peruvian Tax Authority did help with customs procedures related to food donations. See *Sunat agilizo importación de más de 795 toneladas de donaciones en cuarentena*, ANDINA (June 18, 2020), <https://andina.pe/agencia-sunat-agilizo-importacion-mas-795-toneladas-donaciones-cuarentena-802136.aspx>.

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32 Law Against Food Loss and Waste, art. 1.

33 See Decreto Supremo No. 003-2020-MINAGRI, Decreto Supremo que Aprueba el Reglamento de la Ley que promueve la reducción y prevención de pérdidas y desperdicios de alimentos, Primera Disposiciones Complementarias Finales, marzo 13, 2020, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/full/4ns4FMzrKENAiaL7M38Q6W>.

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42 Ley No. 27972, Ley Orgánica de Municipalidades, mayo 26, 2003 (Peru).

43 Food Donation Law, Ch. II, art. 2(b).

44 Food Donation Law, Ch. II, art. 2(c).

45 *Id.* Fourth Final Complementary Provision.

46 *Id.* Ch. II, art. 6.

47 *Id.* arts. 4 and 5.

48 *Id.* Fifth Final Complementary Provision.

49 See Resolución Ministerial N° 179-2019-MIDIS, del proyecto de Disposiciones sobre la donación de alimentos regulada por la Ley N° 30498, agosto 9, 2019, <https://www.gob.pe/institucion/midis/normas-legales/288093-179-2019-midis>. (Draft regulations for the Food Donation Law) [hereinafter “Draft MIDIS Regulations of the Food Donation Law”].

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51 Decreto Supremo No. 055-2017-EF, Decreto Supremo Aprueban Normas Reglamentarias de la Ley No. 30498, Ley Que Promueve La Donación de Alimentos y Facilita el Transporte de Donaciones en Situaciones de Desastres Naturales, marzo 18, 2017, EL PERUANO [E.P.], <https://www.mef.gob.pe/en/por-instrumento/decreto-supremo/15696-decreto-supremo-n-055-2017-ef/file> [hereinafter “MEF Regulation of the Food Donation Law”].

52 Food Donation Law, Ch. III, art. 11.

53 Decreto Supremo No. 146-2020-PCM, Decreto Supremo que modifica el Decreto Supremo No. 116-2020-PCM, Decreto Supremo que establece las medidas que debe seguir la ciudadanía en la nueva convivencia social y Prorroga el Estado de Emergencia Nacional por las graves circunstancias que afectan la vida de la nación a consecuencia del COVID-19, modificado por los Decretos Supremos No. 129-2020-PCM, No. 135-2020-PCM y No. 139-2020-PCM, agosto 28, 2020, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/url/decreto-supremo-que-modifica-el-decreto-supremo-n-116-2020-decreto-supremo-n-146-2020-pcm-1880528-1>.

54 Law Against Food Loss and Waste, art. 1.

55 *Id.* art. 3.

56 *Id.*

57 Decreto Supremo No. 003-2020-MINAGRI, Decreto Supremo que Aprueba el Reglamento de la Ley que promueve la reducción y prevención de pérdidas y desperdicios de alimentos, art. 9, marzo 13, 2020, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/full/4ns4FMzrKENAiaL7M38Q6W>.

58 In September 2019 MINAGRI, in collaboration with the Multisectoral Commission on Food and Nutrition Security, FAO, professional experts, and members of civil society, contributed to the development of draft regulations. MINAGRI continued to seek public comment and receive input from key stakeholders, including BAP.

59 Decreto Supremo No. 003-2020-MINAGRI, Decreto Supremo que Aprueba el Reglamento de la Ley que promueve la reducción y prevención de pérdidas y desperdicios de alimentos, Primera Disposiciones Complementarias Finales, marzo 13, 2020, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/full/4ns4FMzrKENAiaL7M38Q6W>.

60 Decreto Legislativo 1062, Decreto Legislativo Que Aprueba la Ley de Inocuidad de los Alimentos, diciembre 16, 2008, EL PERUANO [E.P.] (Peru), <http://www.leyes.congreso.gob.pe/Documentos/DecretosLegislativos/01062.pdf> [hereinafter “Food Safety Act”].

61 Decreto Supremo No. 034-2008-AG, Decreto Supremo Aprueben Reglamento de la Ley de Inocuidad de los Alimentos, diciembre 17, 2008 (Peru), <http://extwprlegs1.fao.org/docs/pdf/per158710.pdf> [hereinafter “Regulation of the Food Safety Act”].

62 *Id.*

63 Food Safety Act, art. 4.

64 *Id.* art. 1.4.

65 The General Directorate of Environmental Health (*Dirección General de Salud Ambiental* or DIGESA) is granted oversight authority with respect to processed foods; the Fisheries Technology Institute (*El Instituto Tecnológico Pesquero del Perú* or ITP), within the National Agency for Fishing Health (*Organismo Nacional de Sanidad Pesquera* or SANIPES), oversees fishery and aquaculture operations that produce food for human and animal consumption; and the National Service on Agrarian Health (*El Servicio Nacional de Sanidad Agraria* or SENASA), is responsible for the technical, regulatory, and safety aspects of agricultural food.

66 Food Safety Act, art. 13.

67 Ley No. 26842, Ley General de Salud, julio 15, 1997, EL PERUANO [E.P.] (Peru), <https://www.gob.pe/institucion/minsa/normas-legales/256661-26842> [hereinafter “General Health Law”].

68 Decreto Supremo No. 007-98-SA, Decreto Supremo Aprueban el Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas Viernes, artículo 58, setiembre 25, 1998, https://cdn.www.gob.pe/uploads/document/file/284610/256394_DS007-1998.pdf20190110-18386-1q4I45y.pdf; Decreto Supremo No. 004-2014-SA, Decreto Supremo Modifican e incorporan algunos artículos del Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas, Aprobado por Decreto Supremo N° 007-98-SA, marzo 29, 2014.

69 Resolución Ministerial No. 066-2015-MINSA, Resolución Ministerial Aprueban Norma Sanitaria para Almacenamiento de Alimentos Terminados destinados al Consumo Humano, artículo 3, febrero 10, 2015.

⁷⁰ See Bertha Muñoz Veneros, “Normativa Sanitaria de Alimentos,” Ministerio de Salud, Dirección General de Salud Ambiental, 48, [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/9F11388EA0C3C78705257C4500638608/\\$FILE/DIGESA-Normativasanitariadealimentos.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/9F11388EA0C3C78705257C4500638608/$FILE/DIGESA-Normativasanitariadealimentos.pdf).

⁷¹ DIRECCIÓN DE HIGIENE ALIMENTARIA Y ZONOSIS (DHAZ), <http://www.digesa.minsa.gob.pe/DHAZ/DHAZ.asp>.

⁷² Decreto Legislativo No. 1304, que aprueba la Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados, diciembre 30, 2016, El Peruano [E.P.], <https://busquedas.elperuano.pe/download/url/decreto-legislativo-que-aprueba-la-ley-de-etiquetado-y-verif-decreto-legislativo-n-1304-1468963-4>.

⁷³ Norma Técnica Peruana, NTP 209.038 2009, Comisión de Normalización y de Fiscalización de Barreras Comerciales No Arancelarias – INDECOPI, Alimentos Envasados. Etiquetado, pg.11, diciembre 12, 2009 (9th ed.) [hereinafter “Technical Rule 209.038”].

⁷⁴ Ley No. 29571, CÓDIGO DE PROTECCIÓN Y DEFENSA DEL CONSUMIDOR [C.P.D.C.], setiembre 2, 2010 EL PERUANO [E.P.], <https://busquedas.elperuano.pe/normaslegales/codigo-de-proteccion-y-defensa-del-consumidor-ley-n-29571-538113-1>.

⁷⁵ Decreto Supremo No. 179-2004-EF, Texto Único Ordenado de la Ley del Impuesto a la Renta, diciembre 8, 2004, <http://www.sunat.gob.pe/legislacion/renta/ley/fdetalle.pdf> [hereinafter “Income Tax Law”].

⁷⁶ Decreto Supremo No. 055-99-EF, Texto Único Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo, abril 15, 1999, <http://www.sunat.gob.pe/legislacion/igv/ley> [hereinafter “IGV Law”].

⁷⁷ Food Safety Act, art. 20.

⁷⁸ *Ciudades del Perú avanzando hacia sistemas alimentarios sostenibles*, FAO (May 14, 2019), <http://www.fao.org/peru/noticias/detail-events/ru/c/1196527>.

⁷⁹ *Destacan gestión de Midis Qali Warma en encuentro de la Red de Municipalidades en Temas Alimentarios desarrollado en Huancayo*, MIDIS (July 23, 2019), <https://www.gob.pe/institucion/midis/noticias/46015-destacan-gestion-de-midis-qali-warma-en-encuentro-de-la-red-de-municipalidades-en-temas-alimentarios-desarrollado-en-huancayo>.

⁸⁰ MILAN URBAN FOOD POLICY PACT (2015), <http://www.milanurbanfoodpolicypact.org/text>.

⁸¹ *Carta Metropolitana de Lima*, FAO y MUNICIPALIDAD DE LIMA (May 9, 2018), <http://www.fao.org/3/BU650es/bu650es.pdf>.

⁸² Verónica Calderón, *Se inauguró primera planta de Compostaje del Cercado de Lima*, LA REPÚBLICA (apr. 22, 2019), <https://larepublica.pe/sociedad/1454803-alcalde-lima-inauguro-primer-planta-compostaje-cercado-fotos>.

⁸³ Decreto Legislativo No. 1278, Decreto Legislativo que aprueba la Ley de Gestión Integral de Residuos Sólidos, diciembre 23, 2016, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/url/decreto-legislativo-que-aprueba-la-ley-de-gestion-integral-d-decreto-legislativo-n-1278-1466666-4>.

⁸⁴ FOOD & AGRIC. ORG. OF THE U.N., *Enable Inclusive and Efficient Agricultural and Food Systems* (2019), <http://www.fao.org/3/ca3921en/ca3921en.pdf>.

⁸⁵ See FOOD & AGRIC. ORG. OF THE U.N., *Sistemas alimentarios sostenibles en zonas urbanas en Perú*, <http://www.fao.org/peru/programas-y-proyectos/lista-de-proyectos/sistemas-alimentarios-sostenibles-en-zonas-urbanas-en-peru/es>.

⁸⁶ Food Safety Act, art. 4.

⁸⁷ *Id.* art. 5, ch. II.

⁸⁸ General Health Law, art. 90.

⁸⁹ *Id.* art. 92.

⁹⁰ Decreto Supremo No. 007-98-SA, Decreto Supremo Aprueban el Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas Viernes, artículo 58, setiembre 25, 1998, https://cdn.www.gob.pe/uploads/document/file/284610/256394_DS007-1998.pdf20190110-18386-1q4l45y.pdf.

⁹¹ Resolución Ministerial No. 066-2015-MINSA, Resolución Ministerial Aprueban Norma Sanitaria para Almacenamiento de Alimentos Terminados destinados al Consumo Humano, artículo 3, febrero 10, 2015. See BERTHA MUÑOZ VENEROS, “NORMATIVA SANITARIA DE ALIMENTOS,” MINISTERIO DE SALUD, DIRECCIÓN GENERAL DE SALUD AMBIENTAL, 48, [http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/9F11388EA0C3C78705257C4500638608/\\$FILE/DIGESA-Normativasanitariadealimentos.pdf](http://www2.congreso.gob.pe/sicr/cendocbib/con4_uibd.nsf/9F11388EA0C3C78705257C4500638608/$FILE/DIGESA-Normativasanitariadealimentos.pdf).

⁹² See Food Safety Act, art. 4.4 (conveying that consumers receive protection against production, import, commercialization, or free transfer of altered, contaminated, adulterated, or falsified food, or food that has been declared unfit for human consumption); see also General Health Law, art. 90 (prohibiting the free transportation or distribution of altered, contaminated, or adulterated food and beverages).

⁹³ Regulation of the Food Safety Act, art. 15-16.

⁹⁴ Food Donation Law, Fourth Final Complementary Provision.

⁹⁵ *Indecopi: Sólo el 55% de las personas leen las etiquetas de los productos que consumen*, PERÚ21 (aug. 25, 2018), <https://peru21.pe/peru/indecopi-55-personas-leen-etiquetas-productos-consumen-423531-noticia>.

⁹⁶ Decreto Legislativo No. 1304, que aprueba la Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados, art. 3(c).

⁹⁷ Comisión de Normalización y de Fiscalización de Barreras Comerciales No Arancelarias – INDECOPI, “Alimentos Envasados. Etiquetado” NTP 209.038 2009, art. 6.1.7. The “expiration date” must be affixed to most packaged food items, with the exception of fresh fruits and vegetables, alcoholic beverages, bakery goods, and seasonings.

⁹⁸ FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985 (Rev. 2018), http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.

⁹⁹ *Id.* at 2.

¹⁰⁰ Technical Rule 209.038, art. 4.4.4.

¹⁰¹ *Id.*

¹⁰² FAO and WHO, *supra* note 97 at 2.

¹⁰³ Technical Rule 209.038, art. 4.4.5.

¹⁰⁴ Food Donation Law, art. 2(a).

¹⁰⁵ MEF Regulation of the Food Donation Law, Amending Complementary Provision No. 3.3.

¹⁰⁶ Draft MIDIS Regulations of the Food Donation Law, art. 4.

¹⁰⁷ *Id.* arts. 13, 15, 16, 24, and 27.

¹⁰⁸ Ley No. 29571, CÓDIGO DE PROTECCIÓN Y DEFENSA DEL CONSUMIDOR [C.P.D.C.], setiembre 2, 2010 EL PERUANO [E.P.], <https://busquedas.elperuano.pe/normaslegales/codigo-de-proteccion-y-defensa-del-consumidor-ley-n-29571-538113-1>.

¹⁰⁹ C.P.D.C., subch.11, art. 30.

¹¹⁰ Food Safety Act, art. 4, 5.

¹¹¹ Food Donation Law, art. 6.

¹¹² *Id.* art. 2(b).

¹¹³ Total income calculated after loss compensation.

¹¹⁴ Food Donation Law, art. 7.

¹¹⁵ Informe No. 140-2019-SUNAT/7T0000, octubre 4, 2019, <http://www.sunat.gob.pe/legislacion/oficios/2019/informe-oficios/140-2019-7T0000.pdf>.

116 *Id.*
117 MEF Regulation of the Food Donation Law, Amending Complementary Provision; *see also*, Income Tax Law, art. 18, <http://www.sunat.gob.pe/legislacion/renta/ley/capiv.pdf>.
118 *Id.* art. 2.1(ii).
119 *Id.*
120 *Id.* art. 4.
121 *Id.* Amending Complementary Provision 3.3.
122 Food Donation Law, art. 10.
123 *Id.* art. 7.
124 *See* IGV Law. Items including bottled water and sports or energy drinks are taxed at 17% to 25% under the Selective Consumption Tax (*Impuesto Selectivo al Consumo*). *See* SUNAT, <http://orientacion.sunat.gob.pe/index.php/empresas-menu/impuesto-general-a-las-ventas-y-selectivo-al-consumo/impuesto-selectivo-al-consumo-empresas/3119-05-calculo-del-impuesto-isc>.
125 Food Donation Law, art. 12.
126 *See* IGV Law. Items including bottled water and sports or energy drinks are taxed at 17 to 25% under the Selective Consumption Tax (*Impuesto Selectivo al Consumo*). *See* SUNAT, <http://orientacion.sunat.gob.pe/index.php/empresas-menu/impuesto-general-a-las-ventas-y-selectivo-al-consumo/impuesto-selectivo-al-consumo-empresas/3119-05-calculo-del-impuesto-isc>.
127 Food Donation Law, art. 8.
128 IGV Law, art. 2.
129 Food Donation Law, Fifth Final Complementary Provision.
130 *Id.*
131 MIDIS Draft Regulation of the Food Donation Law.
132 Decreto Supremo No. 008-2020-MINAGRI, Decreto Supremo que aprueba el Reglamento de la Ley N° 29676, Ley de Promoción del Desarrollo de los Mercados de Productores Agropecuarios, setiembre 8, 2020, EL PERUANO [E.P.], <https://busquedas.elperuano.pe/download/url/decreto-supremo-que-aprueba-el-reglamento-de-la-ley-n-29676-decreto-supremo-n-008-2020-minagri-1883034-1>.

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