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PERU
RECOMMENDATIONS
FOOD DONATION
LAW AND POLICY

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About The Global Food Donation Policy Atlas

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

About the Harvard Law School Food Law and Policy Clinic

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



About The Global FoodBanking Network

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



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ABOUT THESE RECOMMENDATIONS

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

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

This document sets forth recommendations focused on Peru, where one-third of food that is produced, or 9 million tons of food, is lost or wasted each year,² while 2.8 million people suffered from widespread food insecurity prior to the novel coronavirus (COVID-19) pandemic. The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Peru Legal Guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in Peru.



SUMMARY OF RECOMMENDATIONS

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

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

- Amend the Regulation of the Food Safety Act to explicitly state which food safety provisions apply to donation-receiving entities.
- Produce and disseminate clarifying guidance to identify which safety requirements apply to food donors.

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

- Amend Technical Rule 209.038 to clearly define the expiration date as a safety-based label.
- Adopt a dual date labeling scheme to distinguish between safety-based and quality-based date labels.
- Permit and promote food donation after the quality-based date under the Food Donation Law.
- Issue clarifying guidance on the meaning of date labels and the application to food donation.

To ensure that liability concerns related to donating food do not deter potential donors, the 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.
- Establish liability protection that allows food recovery organizations and other intermediaries to charge a nominal fee for donated food.
- Protect the past-date donation of foods if the date relates to quality rather than safety.

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

- Increase the tax deduction available for food donation and activities associated with the storage, transportation, and delivery of donated food.
- Clarify and expand the tax benefits available during the “state of emergency” donation regime.
- Permit donors to claim a tax benefit for food donation after the quality-based date.

To ensure that all food supply chain actors contribute to food recovery and donation efforts, the government should:

- Expand the scope of the food donation requirement to align with the Law Against Food Loss and Waste.
- Implement and enforce the food donation requirement under the Food Donation Law.

INTRODUCTION

Food loss and waste represents a major environmental, economic, and social challenge in Peru. The latest estimates found that nearly 9% of the population was food insecure,³ yet approximately 9 million tons of food is lost or wasted each year.⁴ Although Peru does not track official food waste and loss data, FAO estimates that 42.9% of tomatoes, 40.8% of plantains, and 31.96% of potatoes are lost between production and distribution,⁵ and 33% of fish is lost before it reaches markets partly due to a lack of adequate storage on fishing vessels.⁶ Similar to other Latin American countries, on-farm, postharvest losses at the household level in Peru have been attributed to damage to crops during harvesting or sorting, education of the household head, and the use of modern inputs.⁷ Additional losses result from transportation, distribution, and storage challenges as well as inefficient packaging and retail practices.

While the full impact of the COVID-19 pandemic is not yet known, the crisis has significantly disrupted supply chains in Peru and around the world. Reports from Peru warn of new barriers to food access and a need for more effective social safety nets to keep millions from slipping into poverty.⁸ Yet, even before the pandemic, the government has necessarily adopted emergency response measures to temporarily alleviate these issues. The Peruvian government has demonstrated an interest in promoting progressive legislative and policy initiatives that address food loss and waste as well as food insecurity and hunger. In 2016, Peru adopted Law 30498 to promote the donation of food and facilitate the transport of donations in the context 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”).⁹ The Food Donation Law sets forth a standard procedure and tax benefits for food donations that have lost commercial value but are still safe for human consumption. The Law also includes a separate donation regime that applies to the free donation of goods, including food, during “states of emergency” that result from natural disasters.¹⁰

IN 2016, PERU ADOPTED LAW 30498 TO PROMOTE THE DONATION OF FOOD AND FACILITATE THE TRANSPORT OF DONATIONS IN THE CONTEXT OF NATURAL DISASTERS.

In 2019, Peru adopted Law 30988 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”).¹¹ While the Law Against Food Loss and Waste does not mention food donation or cross-reference the Food Donation Law, regulations for the Food Loss and Waste Law adopted in March 2020 reconcile the two frameworks.¹² The Regulations also call for the creation of a Task Force under the Multisectoral Commission on Food and Nutrition Security (*Comisión Multisectoral de Seguridad Alimentaria*) to create guidelines in accordance with both laws.¹³

These legislative developments have the potential to advance the ongoing efforts by private-sector actors to promote food donation as a solution to both food loss and waste and food insecurity. The Peruvian Food Bank (*Banco de Alimentos Perú* or BAP), for example, was created in 2014 to redirect surplus food to food-insecure populations. Between 2014 and 2019, BAP recovered approximately 9,767 tons of food, preventing over 415 tons of annual CO₂ emissions.¹⁴ BAP more than tripled its impact during the first few months of the COVID-19 pandemic, serving 180,000 people in the first month following the outbreak.¹⁵ While BAP’s efforts have had a significant impact, strengthening laws and policies relevant to food donation can help BAP and other food recovery organizations scale up their operations in the long term.

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

LEGAL CHALLENGES & POLICY RECOMMENDATIONS

Food Safety for Donations

Issue Overview

A key barrier to food donation in many countries is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors are often uncertain as to which food safety regulations apply to donated food, as opposed to purchased food, as well as the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills. In Peru, this uncertainty results from the existence of a fragmented food safety framework that is difficult to potential donors to discern and apply, particularly in the context of food donation.

Most national food safety provisions are contained in Peru's Food Safety Act (*Ley de Inocuidad de los Alimentos*),¹⁶ and its enabling regulation,¹⁷ with oversight delegated to several agencies.¹⁸ The Food Safety Act created a Permanent Multisectoral Commission on Food Safety (*Comisión Multisectorial Permanente de Inocuidad Alimentaria* or COMPIAL),¹⁹ which includes officials from various ministries, including the Ministry of Health (*Ministerio de Salud* or MINSA). COMPIAL is tasked with the responsibility to propose national policies for food and feed safety.²⁰

The Food Safety Act states that, consistent with the *Codex Alimentarius*, altered, contaminated, adulterated, or falsified foods are not suitable for human consumption.²¹ It also states that everyone has the right to receive protection against the production, importation, or free transfer of such foods.²² This general "suitability" standard is also featured in the General Health Law, (*Ley General de Salud*),²³ which further calls for the regulation of food to ensure that food is suitable for human consumption.²⁴ The Regulation on Food and Beverage Safety Oversight and Control (*Aprueban el Reglamento sobre Vigilancia y Control Sanitario de Alimentos y Bebidas*)²⁵ and the Health Norm for the Storage of Foods for Human Consumption (*Norma Sanitaria para el Almacenamiento de Alimentos Terminados destinados al Consumo Humano*)²⁶ offer such regulations.

Neither the Food Safety Act nor the General Health Law feature a separate section on donated food or explicitly reference food donation; however, both laws do state that the protections set forth apply to food that is offered free of charge.²⁷ This suggests that both laws apply to donated food, even though some provisions are beyond the scope of donation activities. For example, the Food Safety Act includes provisions concerning animal feed.²⁸ The Regulation of the Food Safety Act does speak directly to food donation. Articles 15 and 16 confirm that receiving entities are subject to food safety monitoring and surveillance by the relevant authority.²⁹

This oversight is explained in the Food Donation Law, which tasks the General Directorate of Environmental Health (*Dirección General de Salud Ambiental* or DIGESA) with ensuring that donation-receiving entities adhere to appropriate food safety standards and only distribute food that is suitable for human consumption.³⁰ Despite reiterating that food donations must be suitable for human consumption, the Law does not offer additional guidance as to which food safety regulations apply to donated food. The lack of clear guidance may create confusion among food recovery organizations and deter donors from making donations in the first place.

Recommended Policy Actions

1. AMEND THE REGULATION OF THE FOOD SAFETY ACT TO EXPLICITLY STATE WHICH FOOD SAFETY PROVISIONS APPLY TO DONATION-RECEIVING ENTITIES.

The Food Safety Act's existing regulation is one of the few legal authorities to explicitly address food safety within the context of food donation. As noted above, articles within the regulation confirm that food recovery organizations receiving donated food are subject to oversight by the Ministry of Health through DIGESA.³¹ The Food Donation Law reiterates this responsibility but does not further explain the conditions to which these organizations must adhere. To ensure that food recovery organizations understand which Food Safety Act provisions apply to food donations, the responsible ministries should amend the regulation. Specifically, they should add new provisions clarifying; (1) which of the sanitary conditions apply to food-receiving entities; and (2) which food safety standards are relevant to DIGESA's inspection and ensure that donated food is suitable for human consumption.

2. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE TO IDENTIFY WHICH SAFETY REQUIREMENTS APPLY TO FOOD DONORS.

Amending existing food safety framework to feature a donation-specific section or to explicitly address food donation often eliminates uncertainty among food donors. This clarification helps avoid unnecessary food waste and encourages supply chain actors to donate rather than discard safe food that is no longer marketable. Clear food safety rules for donation also help ensure that donated food meets applicable safety standards and does not pose a risk to beneficiaries. Food donors have an interest in ensuring that donated food is safe for human consumption, as failure to do so may result in liability and preclude them from claiming the tax benefits set forth in the Food Donation Law (discussed later in this document).

With so many overlapping laws, regulations, and responsible agencies, however, simply amending the Food Safety Act and its enabling regulation, or the General Health Law may not eliminate donor confusion. Accordingly, DIGESA, in collaboration with other agencies involved in COMPIAL, should develop clarifying guidance for food donors, setting forth parameters for determining whether a food item is suitable for human consumption, and thus safe for donation. Offering nonbinding, flexible guidance is the most efficient vehicle through which these agencies may offer standardized advice to food donors. This guidance may also be developed in consultation with potential donors in the private sector and donation-receiving entities such as BAP that are also subject to food safety standards.

Date Labeling

Issue Overview

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

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, researchers

found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.³² Similarly, 84% of Americans report throwing away food after the expiration date due to safety concerns even if there is minimal risk of a foodborne illness at that time.³³ This confusion occurs in the home but also impacts food businesses' willingness to donate as well as stigma against past-date food among food donation recipients.

The date labeling regime in Peru perpetuates this cycle of confusion and waste, despite efforts to standardize date labels. The national Labeling Law (*Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados*) requires that all perishable packaged foods feature an "expiration date" ("*fecha de vencimiento*").³⁴ This requirement is further explained in Technical Rule 209.038 (*Norma Técnica Peruana NTP209.038*),³⁵ which was adopted in 2009 by 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).

While INDECOPI adopted the Technical Rule to align with the *Codex Alimentarius*, the Technical Rule fails to clearly distinguish between safety-based and quality-based labels, consistent with the *Codex*.³⁶ The 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods introduced a dual labeling scheme, explaining that the "expiration date" is usually a safety-based label, whereas "best before" ("*consumir preferentemente antes de*") is used to convey quality.³⁷ Peru's Technical Rule, does not adhere to this scheme. Instead, the Technical Rule describes the "expiration date" as a quality-based label rather than the last date on which food is safe for human consumption. The Technical Rule also introduces a separate "use by" date ("*fecha límite de utilización o fecha límite de consumo recomendada o fecha de caducidad*"),³⁸ which is similarly defined as a quality-based label but is not otherwise featured or explained in the rule.

The Technical Rule's labeling scheme not only conflicts with the prevailing interpretation of the "expiration date" as a safety-based label, but also confuses donors seeking to safely donate surplus food. The Food Donation Law promotes the donation of food that meets quality requirements and is still suitable for human consumption at the time of donation, even though it may no longer be marketable.³⁹ Based on the Technical Rule's quality-based definition of the "expiration date," this provision in the Food Donation Law would seem to allow food to be donated after the "expiration date." This interpretation is likely counterintuitive to many donors, who presume that the "expiration date" indicates the last date on which food is safe to eat. Cautious donors may therefore avoid donating food after the affixed date, even if it is still suitable for human consumption.

A provision in the Ministry of Economy and Finance (*Ministerio de Economía y Finanzas* or MEF) regulation of the Food Donation Law may further deter food donation after the affixed date. The MEF Regulation only permits donors to claim a deduction under the Income Tax Law (*Ley del Impuesto a la Renta*) for donations made to receiving entities *before* the featured "expiration date."⁴⁰ These Regulations do not address the possibility that the food may still be safe for human consumption if the manufacturer used the "expiration date" to convey quality in accordance with the Technical Rule's definition. This regulatory provision may lead to unnecessary food waste. The Regulations do not impose any penalty for donating food after the "expiration date." However, without tax benefits available for past-due foods, potential donors are likely to discard food after the expiration date even if it is still safe for human consumption.

A draft of the Ministry of Development and Social Inclusion's (*Ministerio de Desarrollo e Inclusión Social* or MIDIS) regulation of the Food Donation Law's donation requirement, published in August 2019, sought to reinforce this practice. The MIDIS draft regulation expressly prohibited the donation of foods within 15 days of the "expiration date."⁴¹ While this regulation had not been finalized at the time of writing, it suggests that the government interprets the "expiration date" as a safety-based date despite the fact that the Technical Rule does not support this interpretation. This conflicting interpretation is likely to perpetuate confusion among food donors and food recovery organizations and undermine efforts to donate safe, surplus foods.

Recommended Policy Actions

1. AMEND TECHNICAL RULE 209.038 TO CLEARLY DEFINE THE “EXPIRATION DATE” AS A SAFETY-BASED LABEL.

To establish a date labeling scheme that aligns with the most recent guidance from the *Codex Alimentarius*, the government should update the Technical Rule to clearly define the “expiration date” as a safety-based label. The national Labeling Law establishes that the “expiration date” must be affixed to all perishable packaged goods, but the Technical Rule defines this date as an indication of quality rather than safety. Accordingly, INDECOPI, the agency responsible for labeling oversight, should amend the Technical Rule to explain that, consistent with prevailing interpretation and the *Codex Alimentarius*’ General Labeling guidelines, the “expiration date” signifies the last date on which the product should be consumed due to *safety* (and quality) reasons.⁴² The amendment should also designate the language of “use by” or “expiration date” to accompany this date, rather than “best before” which it currently recommends.

2. ADOPT A DUAL DATE LABELING SCHEME TO DISTINGUISH BETWEEN SAFETY-BASED AND QUALITY-BASED DATE LABELS.

Recognizing that a safety-based “expiration date” may not apply to all food products, INDECOPI should further amend the Technical Rule to provide for a dual labeling system consistent with the *Codex Alimentarius*. Many other countries and the food industry are moving toward a dual date labeling scheme that allows manufacturers to choose between a safety-based label and a quality-based label. For example, the European Union requires manufacturers to select only one of two standard labels. “Best before” is required for foods where the label indicates quality, while “use by” or “expiration date” is required if the food safety risk increases after the date.⁴³

Several EU Member States have also issued guidance clarifying the impact of these dates on food donation and others have introduced legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).⁴⁴ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for a standardized dual date labeling system with separate quality and safety date label phrases.⁴⁵

The foundation for such a system already exists in the Technical Rule, which requires an “expiration date” for perishable food items and offers an alternative “use by” date.⁴⁶ The appropriate application of this “use by” date is unclear, but the date is defined as the last day on which the product will feature the quality attributes that consumers would normally expect, and the last date on which the food is marketable.⁴⁷ INDECOPI should rename the “use by” date as a “best before date” or a “best quality before date” to clearly signify it as a quality-based label. This “quality-based” date may be used instead of an “expiration date” for foods that do not pose an increased risk to health over time. INDECOPI should also update the Technical Rule to clarify that the term “use by” is an expression of the “expiration date” label, consistent with the *Codex Alimentarius* guidance.

3. PERMIT AND PROMOTE THE DONATION OF FOOD AFTER THE QUALITY-BASED DATE UNDER THE FOOD DONATION LAW.

As discussed above, the MEF’s regulations of the Food Donation Law and the draft MIDIS regulations deter food donation after the “expiration date” has passed under the Food Donation Law. To ensure that such restrictions do not prevent donors from donating food that is still safe for human consumption, the government should clarify that any restriction on past-date food donations applies only to the safety-based label.

Specifically, the MEF should amend its existing regulations, which preclude donors from claiming the tax benefits set forth in subsection x.1) in article 37 of the Income Tax Law after the “expiration date.” The

amendment should explain that the prohibition on claiming the tax benefit applies only if the “expiration date” indicates safety (i.e., the past-due food is no longer suitable for human consumption). If Peru adopts a dual labeling scheme, MEF should also add a provision in the Food Donation Law regulation that expressly permits donors to claim tax benefits on food donated after the quality-based date if the food is still safe.

As MIDIS develops its final regulations for the Food Donation Law, it should avoid imposing the 15-day restriction introduced in the draft regulations.⁴⁸ Prohibiting donations of food within 15 days of the “expiration date” is likely to result in unnecessary food waste and a missed opportunity to donate safe, surplus food. This is especially true under the existing date labeling scheme where the “expiration date” is not clearly defined as a safety-based label. Accordingly, the updated regulations should either reduce the 15-day window or allow food donors to donate up until the “expiration date,” after which they would be required to attest to the safety of the product.

If the government adopts a standardized dual date labeling system, MIDIS should ensure that the regulations dictating the donation requirement expressly permit food donation after the quality-based label date.

4. ISSUE CLARIFYING GUIDANCE ON THE MEANING OF DATE LABELS AND THE APPLICATION TO FOOD DONATION.

Promoting greater education and awareness of the intended meaning and application of date labels may help reduce food loss and waste and promote greater donation of safe, surplus food. As the government takes the necessary steps to clarify the existing date label regime and takes any future action to adopt a dual date labeling system, education campaigns will be critical to inform donors, food recovery organizations, and consumers of these updates. INDECOPI should take the lead in issuing any clarifying guidance. Joint public- and private-sector initiatives may further ensure that stakeholders understand that date labels should not stand as a barrier to donation.

Liability Protection for Food Donations

Issue Overview

A significant barrier to food donation is the fear among donors that they will be found liable if someone becomes sick after consuming donated food. Other countries, including Argentina and the United States, have established comprehensive protections for both food donors and food recovery organizations.⁴⁹ These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided that they act in accordance with relevant laws. Peru has not developed such comprehensive liability protection for donors and intermediaries; however, it does offer limited protections for donors and food recovery organizations in the event that a beneficiary alleges harm.

Specifically, the Food Donation Law limits potential liability imposed on these actors based on the chain of custody. Under Article 6 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.⁵⁰ Once the receiving entity assumes possession of the donation, the burden shifts to that entity. Food recovery organizations and other intermediaries may be held civilly or criminally liable for any damages arising from gross negligence or imputable fraud between the moment of receipt and distribution to the beneficiary.⁵¹ Based on these standards, neither food donors nor food recovery organizations are held “strictly liable” or deemed automatically responsible regardless of the actions preceding the harm.

These limits on and shifts in responsibility deviate from the traditional liability scheme set forth under the Consumer Protection and Defense Code (*Código de Protección y Defensa del Consumidor*).⁵² The Code introduces

liability according to the consumer-supplier relationship, with suppliers bearing exclusive responsibility for the suitability and quality of food products offered.⁵³ Article 6 of the Food Donation Law, however, makes it clear that this liability scheme does not apply to food donations, noting that “donors” do not qualify as “suppliers” for purposes of the Law.⁵⁴ This exception further limits the potential liability that may otherwise be imposed on food donors.

Nevertheless, the Food Donation Law does not elaborate on how food donors and food recovery organizations may avoid liability claims or identify the available defenses in the event that a claim is made. In the absence of comprehensive protections that set forth clear parameters for avoiding liability and that presume food donors and intermediaries are acting in good faith, those who are risk averse may avoid donating surplus food.

Recommended Policy Actions

1. AMEND THE FOOD DONATION LAW TO ESTABLISH CLEAR, COMPREHENSIVE LIABILITY PROTECTIONS FOR FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS THAT ACT IN GOOD FAITH.

Even though Article 6 of the Food Donation Law limits potential liability imposed on food donors and receiving entities, Peru should amend the Law to expand the scope of this protection. Specifically, liability protection should explicitly grant food donors a presumption of good faith that would reduce the likelihood of finding donors responsible for harm, provided certain conditions are met. In Argentina, for example, comprehensive liability protections apply so long as donations are made in accordance with conditions set forth in the country’s Food Donation Law (i.e., donations are made free of charge to a qualified intermediary and benefits populations in need).⁵⁵ Argentina affords donors and food recovery organizations a presumption of good faith absent any willful misconduct or negligence resulting in harm to a beneficiary.⁵⁶

Amendments to the Food Donation Law could emulate these provisions, granting food donors broad and clear liability protection. This protection should not be absolute: The Law could maintain the rule that food donors are not shielded from protection if they demonstrate gross negligence or willful misconduct when handling the donated food prior to distribution. The expanded protections should also cover registered receiving organizations, ensuring that these actors are similarly protected provided that they act in good faith, comply with applicable food safety laws, and do not demonstrate intent to compromise the integrity of the donated food.

2. ESTABLISH LIABILITY PROTECTION THAT ALLOWS FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES TO CHARGE A NOMINAL FEE FOR DONATED FOOD.

Any amendments to the Food Donation Law that seek to provide comprehensive coverage for both food donors and food recovery organizations should also allow intermediaries to charge a small fee for donated food. Countries will often impose a “no charge” requirement (i.e., food donation intermediaries lose liability protection if they charge final recipients even a small or nominal fee for donated food). This “no charge” restriction ultimately hinders food recovery efforts, as it eliminates potential funding sources for food recovery organizations that could be used to support operations or develop innovative models of food recovery and donation.

The Food Donation Law currently implies this “no charge” requirement, as it defines intermediaries or “receiving entities” as public or private nonprofit organizations that distribute food *free of charge* to those in need.⁵⁷ “Beneficiaries” are also referred to as those who receive *free* food.⁵⁸ While promoting free donations is consistent with a charitable approach to food donation, it does not provide operations with a sustainable source of funding that will ultimately benefit the populations served. Any expansion of liability protection

should therefore consider the potential long-term impact of food recovery organizations and permit registered nonprofit organizations receiving the donations to charge a significantly reduced or nominal fee for donations. Nonprofit organizations should be permitted to use the funds generated only to support their operations and increase capacity to more effectively reduce food waste, hunger, and food insecurity.

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

As previously explained, Peru's current date labeling rules provide for an "expiration date," but do not clearly define this date as safety-based rather than quality-based. Nevertheless, adopted and proposed regulations of the Food Donation Law deter food donation after the "expiration date."⁵⁹ In the absence of a clear legal provision or statement from the government that accounts for this issue and explicitly permits food donation after a quality-based date, food donors and food recovery organizations may be more likely to discard rather than donate food. Any expanded liability protection in the Food Donation Law should account for this issue and clarify that food may be donated after the affixed date, *provided* that the date refers to quality.

Tax Incentives and Barriers

Issue Overview

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

Peru provides such incentives under Chapters II and III of the Food Donation Law. Chapter II 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) after loss compensation. In the case of food donation and associated expenses (such as transportation and storage costs), the deduction for donations and expenses may not exceed 1.5% of the total value of net food sales made by the taxpayer during the fiscal year.⁶⁰ According to SUNAT, any donations made in excess of the 1.5% limit are not deductible as an expense.⁶¹ Once food donors reach that limit, they may discard the surplus food rather than donate it and claim a loss. Such situations require prior communication with SUNAT and approval from a notary or judge.⁶²

The deduction is only available for food donations with no commercial value but still suitable for human consumption and given free of charge to qualifying organizations that are registered as donation-receiving entities with the government tax authority (*Superintendencia Nacional de Aduanas y de Administración Tributaria* or SUNAT).⁶³ This includes public or private nonprofit organizations that are committed to "assistance or social welfare."⁶⁴

In addition to this tax deduction, both Chapters II and III ensure that the value added tax, known as the General Sales Tax (Ley del Impuesto General a las Ventas or IGV) in Peru, do not pose a barrier to donation. The Law creates an exception to the General Sales Tax Law (*Texto Único Ordenado de la Ley del Impuesto General a las Ventas e Impuesto Selectivo al Consumo* or IGV Law)⁶⁵ so that donors may claim the IGV tax credit on donated food. Both Chapters also exempt food donations from market valuation under the Income Tax Law.⁶⁶

Chapter III confirms that the tax deduction introduced in Chapter II is available for donated goods, more broadly, and explains that qualifying donations made free of charge do not constitute taxable income.⁶⁷ Benefits under Chapter III of the Law are only available during "states of emergency" that result from natural disasters,

provided the government confirms and explains the law’s application in its official emergency decree. Despite these benefits, food donors in Peru report that the available financial incentives are not sufficient to motivate food donation as an alternative to throwing away food.⁶⁸

The additional value of the Chapter III tax benefits for food donors is not readily apparent. Since the tax benefits in Chapter III largely mirror those set forth in Chapter II, this special donation regime fails to significantly increase the incentive for food donations during emergency situations. Further, at the time of writing, the Peruvian government had issued and extended a decree declaring a “state of emergency” in response to the COVID-19 pandemic.⁶⁹ However, the decree did not state that the donation of food or other goods would fall within the scope of the Food Donation Law. As a result, food donors could not claim the additional tax benefit contained in Chapter III of the Food Donation Law. The decision to not detail the application of Chapter III during the pandemic may be due to a narrow interpretation of “natural disaster” as the triggering event or to uncertainty surrounding the application of the Food Donation Law.

Recommended Policy Actions

1. INCREASE THE TAX DEDUCTION AVAILABLE FOR FOOD DONATIONS AND ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION, AND DELIVERY OF DONATED FOOD.

To further incentivize taxpayers to donate safe, surplus food, the government should expand the tax benefit currently provided through the Food Donation Law. The Law currently permits food donors to deduct up to 10% of their net income, not to exceed 1.5% of the donor’s net food sales for the fiscal year. These parameters limit the economic benefit for food donors, particularly when compared with the tax incentives offered in other countries. In Colombia, for example, prior to a 2016 tax reform, the Directorate of National Taxes and Customs (*Dirección de Impuestos y Aduanas Nacionales* or DIAN) permitted food donors to claim a deduction worth 125% of the value of food donations made to ABACO, the national food banking network, during the year or taxable period.⁷⁰ Food donors could also claim the standard tax credit available for charitable donations, currently 25% of the value of donations made during the taxable year.⁷¹ Adopting a more competitive benefit such as this may help Peru more effectively promote food donation as a financially beneficial alternative to simply throwing away food.

2. CLARIFY AND EXPAND THE TAX BENEFITS AVAILABLE DURING THE “STATE OF EMERGENCY” DONATION REGIME.

To fulfil the purpose of the Food Donation Law, the government should clarify the scope of application and the benefits set forth in Chapter III. As explained above, for the donation procedure and tax benefits in Chapter III to apply, the government must explicitly detail the how the donation regime applies in the decree announcing a “state of emergency.” The decision to not apply the regime during the COVID-19 pandemic has raised questions as to the Law’s application and whether the “natural disaster” giving rise to the “state of emergency” is interpreted too narrowly. To avoid further confusion and debate on this issue, the government should amend the Food Donation Law to trigger Chapter III’s special donation regime upon the declaration of a “state of emergency” regardless of the cause.

Further, the government should enhance the tax benefits available to food donors and donation-receiving entities during a “state of emergency” (under Chapter III). This may include offering a higher deduction cap or a separate tax credit for donations made to qualifying institutions. Recognizing donation-receiving entities as “essential” and providing them with additional financial and personnel resources during “states of emergency” will allow for more successful food recovery and donation.

3. PERMIT DONORS TO CLAIM A TAX BENEFIT FOR FOOD DONATIONS AFTER THE QUALITY-BASED DATE.

As explained in the “Date Labeling” section of these recommendations, MEF regulations restrict the availability of tax benefits to donations delivered before the “expiration date.”⁷² As the government pursues policy improvements to clarify the meaning of the “expiration date” as a safety-based date and perhaps introduce a dual date labeling system, MEF should update its regulations to address these changes. Specifically, MEF should clarify that tax benefits are still available for donations of past-due food provided that the date refers to quality, not safety.

Donation Requirements or Food Waste Penalties

Issue Overview

Some countries have created food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems. In principle, Peru introduced this policy solution through the Food Donation Law, which contains a donation requirement (“*obligatoriedad de donación*”) that was intended to go into effect in August 2019, 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 has lost commercial value but is still suitable for human consumption.⁷³ This provision does not extend to other actors in the food supply chain such as restaurants or consumers, who may be in possession of safe, surplus food.

Not only does this narrow scope potentially lead to unnecessary food waste, but it is contrary to the broad promotion of food donation set forth in the Law Against Food Loss and Waste. This Law endorses food donation as an action carried out by all natural or legal persons, national or foreign, willing to donate food that may have lost commercial value but is suitable for human consumption.⁷⁴ Like the Food Donation Law’s definition of “donor,” this conceptualization of food donation is not so narrowly defined, but envisions a collective effort by all relevant stakeholders.

Further, at the time of writing in late 2020, the Peruvian government had not yet adopted a regulatory framework to implement and enforce this requirement. In August 2019, MIDIS, the agency tasked with developing the enabling regulations, published a draft resolution for public comment.⁷⁵ At the time of this writing, however, MIDIS had not yet finalized regulations and thus was not enforcing the requirement.

Recommended Policy Actions

1. EXPAND THE SCOPE OF THE FOOD DONATION REQUIREMENT TO ALIGN WITH THE LAW AGAINST FOOD LOSS AND WASTE.

The Food Donation Law is intended to promote greater food donation to contribute to the nutritional needs of the most economically vulnerable populations. Achieving this ambitious goal requires participation and contribution from all relevant actors in the supply chain. Limiting the obligation to donate food to apply only to supermarkets and warehouses, however, sends a different message. If certain actors are not subject to the donation requirement contained in the law, they will be exempt from any enforcement action, penalties, or sanctions that are ultimately imposed for failure to donate safe, surplus food. As a result, these supply chain actors may be more likely to discard rather than donate food.

The Peruvian Congress should therefore amend the Food Donation Law to impose a donation requirement on a broader category of supply chain actors. This expanded scope of application would align with the Law’s

purpose, as well as the stated objectives of the Law Against Food Loss and Waste. Regulations detailing the application of the requirement and compliance procedures should take into account the unique situations of various supply chain actors and make accommodations as appropriate. For example, in determining which supply chain actors are subject to the requirement, the government should consider the potential capacity of the actor to donate food and whether it would be cost effective to monitor and enforce compliance.

2. IMPLEMENT AND ENFORCE THE FOOD DONATION REQUIREMENT UNDER THE FOOD DONATION LAW.

Even if the Peruvian Congress expands the scope of the donation requirement, it will not ensure greater food recovery until MIDIS adopts enabling regulations. The authors of these recommendations recognize the changing circumstances and increased pressures that have resulted from the COVID-19 pandemic; however, it is critical that MIDIS reconvene its efforts to develop a regulatory framework that will activate the donation requirement contained in the Food Donation Law.

MIDIS should consult with other government ministries, including the Ministry for Agriculture and Irrigation (*Ministerio de Agricultura y Riego* or MINAGRI), which adopted regulations for the Law Against Food Loss and Waste in March 2020 to help reconcile the legal frameworks designed to promote greater food recovery and to prevent food loss and waste. MIDIS should also consult other key stakeholders in the private sector such as major supermarkets and donors who will be subject to the requirement as well as BAP, which handles the food donations, to ensure the regulations create clear and efficient guidelines and expectations.

CONCLUSION

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

ENDNOTES

- ¹ The Global Food Donation Policy Atlas project would not be possible without the support of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice. Those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- ² *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>.
- ³ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *Panorama de la seguridad alimentaria y nutricional en América Latina y el Caribe 2018* 6 (2018), <http://www.fao.org/3/CA2127ES/CA2127ES.pdf>.
- ⁴ LA REPÚBLICA, *supra* note 2; ANDINA, *supra* note 2.
- ⁵ Selene Rosales, *Pérdida de alimentos: supera el 40% en tomate y banano en Perú, según la FAO*, GESTIÓN (set. 5, 2019), <https://gestion.pe/peru/perdida-de-alimentos-supera-el-40-en-tomate-y-banano-desde-el-cultivo-hasta-distribucion-noticia>.
- ⁶ 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>.
- ⁷ *Id.* at 28, 31.
- ⁸ Mitra Taj and Anatoly Kurmanaev, *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>.
- ⁹ 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"], <https://busquedas.elperuano.pe/normaslegales/ley-que-promueve-la-donacion-de-alimentos-y-facilita-el-tran-ley-n-30498-1412960-1>.
- ¹⁰ At the time of writing, and amidst a global pandemic, the Peruvian government had not invoked the application of the law in its declaration of the "state of emergency." This may be due to uncertainty surrounding the emergency situations in which the law applies or a narrow interpretation of "natural disaster."
- ¹¹ Ley No. 30988, Ley que Promueve la Reducción y Prevención de Pérdidas y Desperdicios de Alimentos, julio 23, 2019, EL PERUANO (Peru) [hereinafter "Law Against Food Loss and Waste"], <https://busquedas.elperuano.pe/download/url/ley-que-promueve-la-reduccion-y-prevencion-de-perdidas-y-des-ley-n-30988-1791312-3>.
- ¹² 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>.
- ¹³ *Id.*
- ¹⁴ BANCO DE ALIMENTOS PERÚ, <https://bancodealimentosperu.org>.
- ¹⁵ *Banco de Alimentos del Perú, an initiative that tripled its donations due to Covid-19*, JOURNEY PERU (May 15, 2020), <https://www.cocacoladepu.com.pe/historias/comunidad-banco-de-alimentos-del-peru--una-iniciativa-que-triplico-sus-don>.
- ¹⁶ 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"].
- ¹⁷ 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"].
- ¹⁸ See Food Safety Act, arts. 14, 16 (delegating authority to the General Directorate of Environmental Health (*Dirección General de Salud Ambiental* or DIGESA, the National Service on Agrarian Health (*El Servicio Nacional de Sanidad Agraria* or SENASA), and the National Agency for Fishing Health (*El Organismo Nacional de Sanidad Pesquera* or SANIPES))
- ¹⁹ Food Safety Act, art. 13.
- ²⁰ *Id.*
- ²¹ *Id.* art. 4.
- ²² *Id.*
- ²³ 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"].
- ²⁴ General Health Law, Ch. V.
- ²⁵ 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.pdf20190110-18386-1q4145y.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.
- ²⁶ 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.
- ²⁷ 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).
- ²⁸ See Food Safety Act, art. 8.
- ²⁹ Regulation of the Food Safety Act, art. 15-16.
- ³⁰ Food Donation Law, Fourth Final Complementary Provision.
- ³¹ Regulation of the Food Safety Act, art. 12.
- ³² US GAO, DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION, GAO-19-407 (SEPT. 2019), <https://www.gao.gov/assets/710/701238.pdf>.
- ³³ HARV. L.SCH. FOOD L. & POL'Y CLINIC & NAT. RES. DEF. COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017).
- ³⁴ Decreto Legislativo No. 1304, que aprueba la Ley de Etiquetado y Verificación de los Reglamentos Técnicos de los Productos Industriales Manufacturados, art. 3(c).
- ³⁵ 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.
- ³⁶ 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.

37 *Id.* at 2.

38 Norma Técnica Peruana, NTP 209.038 2009, Comisión de Normalización y de Fiscalización de Barreras Comerciales No Arancelarias – INDECOPI, Alimentos Envasados. Etiquetado, art.4.4.5, diciembre 12, 2009 (9th ed.) [hereinafter “Technical Rule 209.038”].

39 Food Donation Law, art. 2(a).

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

41 Resolución Ministerial No. 179-2019-MIDIS, del proyecto de Disposiciones sobre la donación de alimentos regulada por la Ley No. 30498, art. 4, agosto 9, 2019, <https://www.gob.pe/institucion/midis/normas-legales/288093-179-2019-midis> [hereinafter “Draft MIDIS regulations of the Food Donation Law”].

42 FAO and WHO, *supra* note 35 at 2.

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

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

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

46 Technical Rule 209,038, art.4.4.5.

47 *Id.*

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

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

50 Food Donation Law, art. 6.

51 *Id.*

52 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>.

53 C.P.D.C., Subch. II, art. 30.

54 Food Donation Law, art. 6.

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

56 *Id.*

57 Food Donation Law, art. 2(b).

58 *Id.* art. 2(e).

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

60 Income Tax Law, art. 37, para. x) and x.1).

61 Informe No. 140-2019-SUNAT/7T0000, octubre 4, 2019, <http://www.sunat.gob.pe/legislacion/oficios/2019/informe-oficios/i140-2019-7T0000.pdf>.

62 *Id.*

63 MEF Regulation of the Food Donation Law, Amending Complementary Provision; see also Income Tax Law, art. 18 and 19, <http://www.sunat.gob.pe/legislacion/renta/ley/capiv.pdf>.

64 Amending Complementary Provision of Regulation of Food Donation Law; Art. 18 and 19 of Income Tax Law.

65 Food Donation Law, art. 14 and 8; 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”].

66 Food Donation Law, art. 7.

67 *Id.* art. 12.

68 Author conversations with food donors in Peru, January 2020.

69 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>.

70 See ESTATUTO TRIBUTARIO NACIONAL (Colom.), art. 126-2; see also Leonor Eugenia Ruiz de Villalobos, *Donaciones a Bancos de Alimentos dan Derecho a Deducción del 125 por Ciento en el Impuestos Sobre la Renta*, MGI VÍA CONSULTORÍA (nov. 27, 2013), <https://mgiviaconsultoria.com/donaciones-a-bancos-de-alimentos-dan-derecho-a-deducción-del-125-por-ciento-en-el-impuesto-sobre-la-renta> (publishing a letter between Leonor Eugenia Ruiz de Villalobos, the deputy director of DIAN and Ana Catalina Suarez Peña, the executive director of ABACO, approving the application of Tax Statute Art. 126-2 for donations made to ABACO).

71 ESTATUTO TRIBUTARIO NACIONAL (Colom.), art. 257; the authors of this document note that in 2018 DIAN issued a ruling suggesting that food donations were no longer eligible for the enhanced benefit, but donors could still claim the 25% tax credit. This decision is subject to ongoing discussion in Colombia.

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

73 Food Donation Law, Fifth Final Complementary Provision.

74 Law Against Food Loss and Waste, art. 3.11.

75 Draft MIDIS Regulation of the Food Donation Law.

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**THE GLOBAL
FOOD DONATION
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