



THE GLOBAL FOOD DONATION POLICY ATLAS

Executive Summary: South Africa

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

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

SOUTH AFRICA FOOD LOSS AND WASTE

Each year, approximately 10 million tons of food is either lost or wasted along the supply chain in South Africa. At the same time, an estimated 20% of the population was food insecure prior to the novel coronavirus (COVID-19) pandemic—a global emergency that has since exacerbated both hunger and food loss and waste.

The South African government has responded to these challenges in recent years by adopting legislative frameworks intended to promote greater food security and food recovery. In 2013, South Africa adopted the National Policy on Food and Nutrition Security for South Africa, as a legislative mechanism to promote the realization of the right to food as enshrined in the Constitution. To tackle the problem of food loss and waste, the Department of Trade, Industry, and Competition (DTIC), the Department of Environment, Forestry and Fisheries (DEFF), and the Consumer Goods Council of South Africa (CGCSA), developed a Food Loss and Waste Voluntary Agreement in 2020. A public-private initiative, the Voluntary Agreement seeks to leverage food recovery to mitigate food loss, food waste, and food insecurity in South Africa.

South Africa: By the Numbers

- Population: 58,600,000
- GDP: \$351.4 billion
- Poverty Rate: 49.2%
- Prevalence of Food Insecurity: 20%
- Global Food Security Index: 57.8
- FLW Estimates: 10 million tons

SOUTH AFRICA FOOD DONATION POLICY HIGHLIGHTS

TAX INCENTIVES AND BARRIERS: South Africa’s Income Tax Act of 1962 allows corporate and individual donors to claim an annual deduction for their total value of charitable donations made to

qualifying organizations up to 10% of the taxpayers' annual taxable income. Donors may only claim the deduction for donations made to registered Public Benefit Organizations (PBO). Further, for most commercial transactions, including the sale of food, vendors must incorporate the VAT, which is levied at a standard 15% rate. The VAT Act and the Tax Administration Act also permit vendors to claim a refund from SARS.

ACTION OPPORTUNITY: To encourage food donors and food recovery organizations to donate food, South Africa should exempt free food donations from the activities for which the Value Added Tax must be reimbursed. The South African government should also provide an enhanced benefit for food donation or tiered tax benefits consistent with the food utilization hierarchy in the South Africa Food Loss and Waste Voluntary Agreement. In addition, South Africa should offer tax credits for food donations made to food banks and intermediaries receiving food donations; and provide an increased tax deduction for food donations and activities associated with the storage, transportation and delivery of donated food.

SOUTH AFRICA FOOD DONATION POLICY OPPORTUNITIES

DATE LABELING: South Africa's Regulations Relating to the Labelling and Advertising of Foodstuffs (No. R.146) under the Foodstuffs, Cosmetics and Disinfectants Act (FCDA) provides three date labels and requires all food items to have: a "date of minimum durability," expressed as "best before", and/or a "sell by" date, and/or a "use by" date, depending on the type of food product. The Labeling Regulation applies to all food that is offered for sale, including food that is donated. However, the regulatory definitions for these labels, do not clearly designate these labels as quality-based or safety-based. The Labelling Regulation also does not expressly permit food donation.

ACTION OPPORTUNITY: The South Africa government should amend the Regulations Relating to the Labelling and Advertising of Foodstuffs to provide for a quality-based and safety-based label only, consistent with a dual-date labeling scheme elaborated in the Codex Alimentarius. South Africa should also amend the Regulations Relating to the Labeling and Advertising of Foodstuffs to permit the donation of food after the quality-based date. The South African government should also promote consumer education and awareness about the current definition and interpretation of date labels.

FOOD SAFETY FOR DONATIONS: South Africa's Foodstuffs, Cosmetics, and Disinfectants Act of 1972 (FCDA) and accompanying regulations sets forth food safety requirements. While the FCDA does not explicitly include food donation in its scope, existing food safety rules are broad in scope and presumably apply to food donations. Ultimately, food donors and intermediaries may face challenges determining which food safety standards apply to donated food.

ACTION OPPORTUNITY: South Africa should amend the Foodstuffs, Cosmetics and Disinfectant Act (FCDA) to include a donation specific chapter. The Department of Health should develop regulations related to the FCDA that elaborate food safety for donations. In addition, or alternatively, South Africa's Department of Health may also issue clarifying guidance regarding which food safety requirements apply to donated food.

LIABILITY PROTECTION FOR FOOD DONATIONS: South Africa does not offer comprehensive liability protection for food donors and food recovery organizations. South Africa's Consumer Protection Act covers any claims of harm arising from food or other goods and also enumerates several defenses that may help shield food donors from liability. In particular, the CPA applies to transactions where a fee is paid, therefore food donation does not fall under its scope. Nonetheless, food donors and food recovery organizations may be wary of donating food due to fear of being held liable in case a beneficiary is harmed.

ACTION OPPORTUNITY: South Africa should adopt national legislation that establishes clear and comprehensive liability protection for food donors and food recovery organizations. Further, in the absence of the development of a Good Samaritan law, South Africa should produce and disseminate clarifying guidance on whether the Consumer Protection Act applies to free food donations.

GOVERNMENT GRANTS AND INCENTIVES: Grants and incentive programs funded at the national or state level offer an important resource for food donation initiatives. Although South Africa does not offer any funding resources for food donation infrastructure. In 2020, South Africa developed a Food Loss and Waste Voluntary Agreement to tackle food loss and waste.

ACTION OPPORTUNITY: South Africa should further develop grant opportunities for food donation infrastructure. For example, the South African government, in particular, DTIC or DEFF should establish grant programs targeted at implementing and expanding the scope of the Food Loss and Waste Voluntary Agreement.

SOUTH AFRICA FOOD DONATION POLICY: HOW DOES IT COMPARE?

South Africa has prioritized food security in its legislative framework, and most recently developed the Food Loss and Waste Voluntary Agreement to address food loss and waste. However, there is a need to execute legal and policy solutions through legislation and regulatory reform to advance these agendas and position food donation as a necessary tool to success. Clarifying food safety requirements, standardizing date labels, and adopting comprehensive liability protections for food donors and food recovery organizations may help achieve this goal.

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

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

BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

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

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

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

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

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

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

THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

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