



**F**

**O**

**D**

**A**

**D**

**O**

**E**

# ECUADOR **LEGAL GUIDE**

FOOD DONATION  
LAW AND POLICY

OCTOBER 2022

## Authors

This report was written by the following staff and students at the Harvard Law School Food Law and Policy Clinic (FLPC): Trevor Findley, Emily M. Broad Leib, Joseph Beckmann, Ata Nalbantoğlu, and Rhea Saksena.

## Acknowledgements

We are grateful to The Global FoodBanking Network (GFN) whose input, ideas, and expertise informed much of our research. This report was also made possible by the support of our on-site partners in Ecuador, with whom we discussed the ideas provided herein, including Banco de Alimentos Quito, Banco de Alimentos Diakonía, DLA Piper Global Law Firm, Pérez Bustamante & Ponce, and many other NGOs and businesses.

## 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 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 the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org).

## About the Harvard Law School Food Law and Policy Clinic

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/food-law-and-policy](http://www.chlpi.org/food-law-and-policy).



## About The Global FoodBanking Network

The Global FoodBanking Network (GFN) supports community-driven solutions to alleviate hunger in more than 40 countries. While millions struggle to access enough safe and nutritious food, nearly a third of all food produced is lost or wasted. GFN is changing that. GFN believes food banks directed by local leaders are key to achieving Zero Hunger and building resilient food systems. For more information, visit [www.foodbanking.org](http://www.foodbanking.org).



## Made Possible with Support from the Walmart Foundation

The research included in this report was made possible through funding by the Walmart Foundation. The findings, conclusions, and recommendations presented in this report are those of the Harvard Law School Food Law and Policy Clinic alone and do not necessarily reflect the opinions of the Walmart Foundation.



Report design by Najeema Holas-Huggins.

# TABLE OF CONTENTS

- INTRODUCTION.....1**
  - PURPOSE OF THIS GUIDE.....1
  - STATE OF FOOD INSECURITY, FOOD LOSS, WASTE, AND RECOVERY IN ECUADOR.....2
- OVERVIEW OF ECUADOR’S RELEVANT LEGAL FRAMEWORK.....3**
  - ECUADOR’S LEGAL FRAMEWORK.....3
  - LAW TO PREVENT AND REDUCE FOOD LOSS AND WASTE AND REDUCE THE HUNGER OF PEOPLE IN VULNERABLE SITUATIONS.....4
  - OTHER LAWS.....5
  - MUNICIPAL/LOCAL/STATE LAWS.....5
- LEGAL ISSUES RELEVANT TO FOOD DONATION.....6**
  - FOOD SAFETY.....6
  - DATE LABELING.....6
  - LIABILITY PROTECTION.....8
  - TAXES.....8
    - INCENTIVES.....8
    - BARRIERS.....9
  - DONATION REQUIREMENTS.....9
  - GRANTS AND INCENTIVES.....10
  - MISCELLANEOUS.....10
- CONCLUSION.....10**

# INTRODUCTION

## PURPOSE OF THIS GUIDE

Food loss and waste (FLW) 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.<sup>1</sup> This amounts to approximately 1.3 billion tons of food each year that ends up in landfills.<sup>2</sup> FLW 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 overestimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.<sup>3</sup>

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,<sup>4</sup> using roughly 28% of agricultural land<sup>5</sup> and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.<sup>6</sup> Collectively, this damage costs approximately US\$940 billion per year.<sup>7</sup> Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.<sup>8</sup> 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.<sup>9</sup>

In many countries, food donation is 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, nongovernmental 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 and FLW continue to rise, new and 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.<sup>10</sup> This innovative partnership maps the laws and policies affecting donations in several countries around the world. 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 Ecuador**, a country with simultaneously high rates of food waste and food insecurity. Food waste in Ecuador is estimated at more than 900,000 tons each year.<sup>11</sup> Even though much of Ecuador's food waste remains safe to eat, Ecuador has the second-highest level of chronic childhood malnutrition in Latin America, with 23% of children under 5 and roughly 27% of children under 2 suffering from it.<sup>12</sup> FLPC and GFN, in collaboration with partners in Ecuador,<sup>13</sup> have 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. It also serves as a resource for individuals and institutions in other countries that are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Ecuador, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local level. The subsequent sections look more closely at the laws generally applicable to food donation: food safety laws and regulations, 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 Ecuador has developed and subsequently implemented these legal frameworks compared to other countries may vary.

## STATE OF FOOD INSECURITY, FOOD LOSS, WASTE, AND RECOVERY IN ECUADOR

The COVID-19 pandemic has increased food insecurity in Ecuador, while an influx of individuals fleeing economic and political disruption in Venezuela and neighboring Colombia has further increased the number of hungry people.<sup>14</sup> An estimated 32.7% of the population was moderately or severely food insecure between 2018 and 2020, an almost three-fold increase from 2014 to 2016.<sup>15</sup>

In response to rising hunger rates, the Ecuadorian government proposed and eventually passed a law requiring food that is safe for human consumption to be donated or put to other beneficial uses, as discussed later in this Legal Guide. As charitable food organizations struggled to meet the increased demand for food during the pandemic, the new law provides an opportunity to reduce both food insecurity and FLW.

### Ecuador by the numbers

Population <b>17.3 million</b>	Prevalence of Food Insecurity <b>33%</b>	World Bank Classification <b>Upper middle income</b>
Median Age <b>27.9 years</b>	Global Food Security Index <b>61.8</b>	Human Development Index <b>0.76</b>
GDP <b>\$98.81 billion</b>	GINI Index <b>47.3</b>	FLW Estimates <b>900,000 tons/year</b>
Poverty Rate <b>33%</b>	Food Sustainability Index <b>N/A</b>	

**Source: The Global FoodBanking Network, August 2022**

As with any new law, specific details about how the government implements it are important and help determine how big of an impact the law may have on society. While it is too early to determine the impact of this new law, it includes provisions that, when implemented elsewhere, have reduced food waste and increased food donations. This new law should also have a positive impact on reducing hunger.

From smallholder farmers to multinational corporations, Ecuador’s private sector is an active participant in food recovery efforts. For example, Banco de Alimentos Diakonía and Banco de Alimentos Quito collect donations from individual farmers and recognized global brands and then redistribute them to those in need. Since Ecuador’s new law applies broadly to those throughout the food supply chain, the private sector will continue to play an important role in reducing food insecurity and minimizing FLW.

As Ecuador seeks to reduce FLW and mitigate food insecurity, it is critical that these and other actors recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide provide an overview of Ecuador’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 ECUADOR’S RELEVANT LEGAL FRAMEWORK

## ECUADOR’S LEGAL FRAMEWORK

Ecuador’s civil law system relies on its constitution as the primary source of law.<sup>16</sup> The legal system is rooted in written laws instead of precedential judicial decisions.<sup>17</sup> Currently, the 2008 constitution, which replaced the 1998 Constitution, is in force.<sup>18</sup> The constitution formally recognizes the right to adequate food and food sovereignty. Article 13 declares, “Persons and community groups have the right to safe and permanent access to healthy, sufficient and nutritional food, preferably produced locally and in keeping with their various identities and cultural traditions. The Ecuadorian State shall promote food sovereignty.”<sup>19</sup> Moreover, article 281 recognizes food sovereignty as a critical objective and declares that the state must “ensure that persons, communities, peoples and nations achieve self-sufficiency with respect to healthy and culturally appropriate food on a permanent basis.”<sup>20</sup> Several other pertinent constitutional provisions directly speak to the right to food and nutrition. For example, article 42 ensures that all displaced individuals have a right to food,<sup>21</sup> article 51 recognizes the right of imprisoned persons to adequate food,<sup>22</sup> and article 66 guarantees the right to food and nutrition as part of the right to a decent life.<sup>23</sup> Together, these provisions help inform the recently passed food waste reduction law, titled the Law to Prevent and Reduce Food Loss and Waste and Reduce the Hunger of People in Vulnerable Situations (*Ley para Prevenir y Reducir la Pérdida y el Desperdicio de Alimentos y Mitigar el Hambre de las Personas en Situación de Vulnerabilidad Alimentaria*).<sup>24</sup>

### THE CONSTITUTION FORMALLY RECOGNIZES THE RIGHT TO ADEQUATE FOOD AND FOOD SOVEREIGNTY.

The 2008 constitution amended the distribution of governmental power in Ecuador’s decentralized republic<sup>25</sup> and established new entities to take part in governing the nation.<sup>26</sup> Political power is divided among five branches: executive, legislative (national assembly), judicial and indigenous justice, transparency and social control, and electoral.<sup>27</sup>

The legislative and executive branches play a critical role in the Ecuadorian law-making process. The legislative branch is headed by a unicameral national assembly and can “expedite, codify, reform, and repeal” laws.<sup>28</sup> The president can approve bills drafted by the national assembly and enact them in the national register.<sup>29</sup> The executive branch also includes the vice president’s office and the 16 ministries of state, including the Ministry of Agriculture and Livestock (*Ministerio de Agricultura y Ganadería*), which “[p]romote[s] family farming guaranteeing food sovereignty.”<sup>30</sup> Other ministries and agencies relevant to the food regulatory framework include the Ministry of Economic and Social Inclusion (*Ministerio de Inclusión Económica y Social*); the Ministry of Public Health (*Ministerio de Salud Pública*); the Ecuadorian National Standards Institute (*Servicio Ecuatoriano de Normalización*, or INEN); the National Agency for Sanitary Regulation, Control and Surveillance (*Agencia Nacional de Regulación, Control y Vigilancia Sanitaria*, or ARCSA); and the Phyto and Zoonitary Regulation and Control Agency (*Agencia de Regulación y Control Fito y Zoonitario*, or AGROCALIDAD).<sup>31</sup>

Several agencies oversee food safety laws and regulations in Ecuador. Two key actors are INEN and ARCSA. INEN develops and promotes technical standards for food products, including labeling, best practices guides, and standards of identity.<sup>32</sup> INEN also creates methods to analyze, inspect, and classify different foods.<sup>33</sup> These classification methods rely on the International System of Units and establish quality certification.<sup>34</sup> INEN also liaises with the *Codex Alimentarius* to ensure international compliance.<sup>35</sup> Meanwhile, ARCSA operates under the Ministry of Public Health and serves as the technical body that oversees various products' safety and sanitary compliance.<sup>36</sup> ARCSA regulates processed food items, additives, hygienic products, and medicinal products, among others.<sup>37</sup>

Various laws govern ARCSA's regulatory actions. Under the Health Law<sup>38</sup> the agency is responsible for inspecting all processed foods and beverages, including imported items. Furthermore, the Sanitary Control and Notification Regulation<sup>39</sup> requires domestically produced and imported items to undergo a sanitary notification process to ensure food meets a base level of food safety.<sup>40</sup> ARCSA actively enforces food regulations, including packaging, labeling, distribution, transportation, and manufacturing requirements.<sup>41</sup> It is also responsible for various health and sanitation compliance.<sup>42</sup> Together, INEN and ARCSA set safety standards and rigorously enforce them, respectively. The two agencies will also have an active role in food safety regulation under the FLW Law.

## LAW TO PREVENT AND REDUCE FOOD LOSS AND WASTE AND REDUCE THE HUNGER OF PEOPLE IN VULNERABLE SITUATIONS

In May 2022, Ecuador passed the Law to Prevent and Reduce Food Loss and Waste and Reduce the Hunger of People in Vulnerable Situations (*Ley para Prevenir y Reducir la Pérdida y el Desperdicio de Alimentos y Mitigar el Hambre de las Personas en Situación de Vulnerabilidad Alimentaria*, hereinafter the "FLW Law").<sup>43</sup> The FLW Law is a sea change in the country's effort to achieve food sovereignty and reduce food waste and hunger. It aims to prevent and reduce food waste across the supply chain while also establishing a "culture of donation."<sup>44</sup> More specifically, the FLW Law bans destroying food that is fit for human consumption and includes a hierarchy of alternative uses such as donating to a food bank, feeding animals, producing renewable energy, and composting.<sup>45</sup> It applies to a broad scope of actors, including all organizations that receive donations, donors, beneficiaries, and those that help facilitate donations.<sup>46</sup> The FLW Law includes general enforcement mechanisms, envisioning broad cooperation between various government agencies.<sup>47</sup>

**THE FLW LAW...AIMS TO PREVENT AND REDUCE FOOD WASTE ACROSS THE SUPPLY CHAIN WHILE ALSO ESTABLISHING A "CULTURE OF DONATION."**

The FLW Law is notable for establishing a general obligation not to destroy food as well as a sanctioning regime for infractions. Article 12 requires anyone, whether national or foreign, involved in the "production, processing, distribution, marketing and importation of food products" to not destroy food.<sup>48</sup> This general duty does not extend to items "no longer fit for consumption."<sup>49</sup> Anyone that destroys food because it is no longer edible has to justify the decision and show that no alternative under the food recovery hierarchy was feasible.<sup>50</sup> Those who fail to comply with article 12 are subject to sanctions. The FLW Law categorizes potential infractions as minor, serious, or very serious.<sup>51</sup> For a minor infraction, a fine of 50% of a standard worker's salary, as calculated by the government, is imposed.<sup>52</sup> If the infraction is serious, the penalty is 100% of the salary.<sup>53</sup> For very serious infractions, the fine is 200% of the salary. Minor infractions include violations by food banks or other organizations that receive donations (e.g., using donated food for a purpose other than alleviating hunger).<sup>54</sup> Serious infractions include (1) destroying food that is "fit for human consumption" or (2) selling or allocating the donated food directly or indirectly for a different purpose than articulated by the law.<sup>55</sup> A very serious violation is committing two serious violations.<sup>56</sup> Actors in the solidarity economy, which refers to small-scale food manufacturers and sellers such as street vendors, are exempt from the sanctioning regime.<sup>57</sup>

The remaining sections of the FLW Law outline several key terms and include additional strategies to minimize FLW. For instance, article 14 explains that donated food must meet certain food safety requirements.<sup>58</sup> In addition, chapter 3 establishes incentives for actors to prioritize donating food rather than discarding it.<sup>59</sup> Meanwhile, article 15 explains the label requirements for donated food and allows donors to remove their brand markings on donated items.<sup>60</sup>

The FLW Law also identifies several next steps for the agencies responsible for implementing the law. These agencies must establish regulations, practices, and guidelines to help facilitate successful implementation. For example, the Ministry of Economic and Social Inclusion (*Ministerio de Inclusión Económica y Social*) is tasked with creating criteria for food vulnerability.<sup>61</sup> The ministry's determinations regarding food vulnerability are critical because the FLW Law is meant to meet the immediate needs of those facing food vulnerability, and regional governments must prioritize areas facing higher food vulnerability rates.<sup>62</sup>

## OTHER LAWS

National laws that governed the food system in Ecuador prior to the FLW Law created a comprehensive system of food norms, standards, and safety requirements. Various agencies such as INEN, ARCSA, and AGROCALIDAD enacted a wide range of regulations establishing baseline standards for food products and their production methods. The food regulations of different agencies have a specific hierarchy. The Organic Food Law and Food Sovereignty Law (*Ley Orgánica del Régimen de la Soberanía Alimentaria*) is the overarching law that governs food regulation.<sup>63</sup> Following this, the Sanitary Technical Regulations for Donation of Processed Foods (*Normativa Técnica Sanitaria para Donación de Alimentos Procesados*)<sup>64</sup> and the Certificate of Sanitary Notification of Processed Foods (*Certificado de la Notificación Sanitaria de Alimentos Procesados*)<sup>65</sup> further clarify food safety requirements. There are multiple best practice guides for food production and food processing. These guides detail safety standards for specific products and ensure that all items within the same category adhere to a baseline safety standard.<sup>66</sup>

Ecuador also addresses food safety issues through the Food Regulation (*Reglamento de Alimentos*). The Food Regulation regulates various aspects of food production to ensure the health and safety of consumers.<sup>67</sup> It explicitly states that food that is “altered, adulterated, contaminated, falsified” or that has “abnormal characteristics” that may harm consumers is not suitable for consumption and therefore may not be sold.<sup>68</sup> The Food Regulation also contains specific provisions that establish food transportation, storage, and production safety standards.<sup>69</sup>

Outside of food safety, the Organic Law of the Food Sovereignty Regime (*Ley Orgánica del Régimen de la Soberanía Alimentaria*) clarifies the Ecuadorian state's obligations to “guaranteeing individuals, communities and peoples the self-sufficiency of healthy, nutritious and culturally appropriate food.”<sup>70</sup>

The Tax Simplicity and Progressivity Law (*Ley de Simplicidad y Progresividad Tributaria*) establishes the value-added tax (*Impuesto al Valor Agregado*) rates and exclusions. Most foods are exempt from VAT, and those that are not are taxed at a 12% rate.<sup>71</sup>

Together, these laws clarify the regulations underpinning the food system in Ecuador. Prior to the FLW Law, no explicit laws regulated food waste and food donation in Ecuador.

## MUNICIPAL/LOCAL/STATE LAWS

Ecuador is a unitary country but has decentralized governments at the regional, provincial, canton, and parish levels with administrative, financial, and political autonomy as articulated in the Constitution of Ecuador. As a unitary country, all power resides with the national government unless explicitly delegated to lower levels of



government, as is the case with land use development, watershed management, and food security.<sup>72</sup> Ecuador is divided into four regions<sup>73</sup> and 24 provinces (*provincias*),<sup>74</sup> which are further subdivided into 221 cantons and 1,500 parishes (*parroquias*).<sup>75</sup> The president appoints governors to the provinces,<sup>76</sup> whereas the mayors of cantons are locally elected.<sup>77</sup> Under the constitution, these decentralized local governments have “political, administrative, and financial” autonomy consistent with the laws and policies of the national government.<sup>78</sup>

The FLW Law gives provincial governments an active role in food donation management.<sup>79</sup> Provincial governments must coordinate with recipient organizations and zone their respective jurisdictions to designate areas with more significant food vulnerability problems.<sup>80</sup> The FLW Law states that provinces must prioritize areas defined as having higher rates of food vulnerability in their food donation plans.<sup>81</sup> Furthermore, provinces create collection points for food donation and consider tax incentives to facilitate more donations.<sup>82</sup>

## LEGAL ISSUES RELEVANT TO FOOD DONATION

### FOOD SAFETY

In many countries, 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 be redirected to populations in need is instead destined for landfills.

In Ecuador, food safety laws are mostly contained in the Organic Food Law and Food Sovereignty Law,<sup>83</sup> the Sanitary Technical Regulations for Processed Foods,<sup>84</sup> the Certificate of Sanitary Notification of Processed Foods,<sup>85</sup> and the Food Regulation, as described above.

The FLW Law sets a baseline food safety standard for donated food products. Article 14 establishes requirements for products and foods subject to donation.<sup>86</sup> It declares that donated items must meet the requirements of existing standards and protocols.<sup>87</sup> The relevant requirements include all the norms and standards implemented by INEN and the sanitary regulations promulgated by ARCSA. Furthermore, recipient organizations must distribute the donated products immediately to avoid decomposition.<sup>88</sup> Donors and recipient organizations cannot donate foods categorized as not suitable for consumption, as defined above.<sup>89</sup> Furthermore, the FLW Law calls on ARCSA to actively “monitor and control products and foods intended for human consumption” and intervene to ensure food safety requirements are met.<sup>90</sup> Outside of the provision in the FLW Law, the Sanitary Technical Regulations for Donation of Processed Foods (*Normativa Técnica Sanitaria para Donación de Alimentos Procesados*) states that any processed food donation from a foreign country must be authorized by ARCSA prior to its import. Outside of these requirements, there are no additional food safety requirements specific to donated food and no additional guidance on what food safety requirements apply to donated food.

### DATE LABELING

Date labels affixed to food products are a major driver of food waste but can also be an obstacle to food donation. As explained in the previous section, 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, this can be difficult to gauge with 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” passes. 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 time frame for label dates, most of which reflect when the food will be at its “peak quality.”<sup>91</sup> 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.<sup>92</sup> 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.<sup>93</sup> These consumers prematurely discard their items, thinking there is a safety risk if the “expiration date” has passed.<sup>94</sup> Similarly, recipient organizations may refuse food that has passed its label date because they assume it will create a health hazard.<sup>95</sup> Thus, a clear label scheme can help address the ambiguity and minimize the waste of otherwise safe, surplus food.

The Ecuadorian date label regime does not fully clarify which labels relate to food safety versus food quality. Ecuador is a part of the Andean Community (*Comunidad Andina*, or CAN), comprised of Bolivia, Colombia, Ecuador, and Peru.<sup>96</sup> CAN members passed Decision 562, which states that member states must commit to uniform technical regulations on packaging and labeling to facilitate more straightforward trade across their borders.<sup>97</sup>

INEN has enacted technical standards that define what information must be included in the product’s labeling as well as how to declare it. These guidelines are contemplated in NTE INEN 1334-1, NTE INEN 1334, and NTE INEN 1334-3 (hereinafter the “Date Label Regulation”), consistent with CAN’s Decision 562. The Date Label Regulation sets out labeling requirements for food products.<sup>98</sup> This regulation requires certain date markings on products, although it explicitly excludes fresh fruits, vegetables, wines, alcoholic beverages, and pastry items.<sup>99</sup> Under the Date Label Regulation, a “maximum consumption date” (*fecha máxima de consumo*) or “expiration date” (*fecha de vencimiento*) must be declared.<sup>100</sup> These two terms are used interchangeably in the regulation and indicate the date after which the product “will probably not have the *quality* attributes that consumers normally expect.”<sup>101</sup> The manufacturer sets the relevant expiration date unless there is a product-specific statute.<sup>102</sup> The manufacturer can also choose one of the following expressions to denote the expiration date: expiration date, expires, exp., maximum consumption time, consume before, or consume preferably before.<sup>103</sup> If the manufacturer elects to use the maximum consumption date label, the product packaging must also contain a date of manufacture (*fecha de fabricación*) or date of production (*fecha de elaboración*).<sup>104</sup> Food may not be marketed past this date.

**THE FLW LAW CALLS ON THE NATIONAL HEALTH AUTHORITY AND AFFILIATED AGENCIES TO IMPLEMENT GUIDELINES ON PRODUCT LABELING, INCLUDING ANY POTENTIAL UPDATES THAT MAY CLARIFY THE DIFFERENCES BETWEEN QUALITY-BASED AND SAFETY-BASED DATE LABELS TO ENSURE THAT FOOD FIT FOR HUMAN CONSUMPTION MAY STILL BE DONATED.**

The FLW Law relies on the existing date labeling regime. Under article 14, food products can be donated after they have reached the end of their marketing period, are about to expire, or have expired.<sup>105</sup> Thus, food can be donated past its expiration date. Article 15 allows recipient organizations to remove the “distinctive brand of the donated products.” However, the product label must clearly indicate the ingredients, expiration date, and the manufacturer.<sup>106</sup> Finally, the FLW Law calls on the National Health Authority and affiliated agencies

to implement guidelines on product labeling, including any potential updates that may clarify the differences between quality-based and safety-based date labels to ensure that food fit for human consumption (i.e., past a quality-based date) may still be donated.<sup>107</sup> While drafting these guidelines, the National Health Authority could recommend an update to the date labeling regulations to require a dual date labeling regime that clearly identifies whether dates refer to quality or safety. A growing number of countries require different labels for quality-based and safety-based dates.<sup>108</sup>

## LIABILITY PROTECTION

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 damage). 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.

The FLW Law offers robust liability protection to food donors, which are defined as anybody who distributes food that is fit for human consumption.<sup>109</sup>

The protection for food donors and food recovery organizations is very explicit in the FLW Law. Article 11 includes foreign and domestic entities that engage in the production, processing, distribution, marketing, or import of foods within the scope of liability protection. Under article 18, these entities are exempt from civil or criminal liability for “injuries or losses that may occur due to the nature, age, packaging or condition of the donated food, except in cases of gross negligence, established in the Code Civil.”<sup>110</sup> The relevant section in the Civil Code distinguishes between three types of fault: serious fault (*culpa grave* (including gross negligence)), intermediate fault (*culpa leve*), and slight fault (*culpa levísimo*).<sup>111</sup> Under this framework, food donors will not have legal exposure unless their negligence rises to serious fault, which is the “extreme departure from ordinary care.”<sup>112</sup> The FLW Law includes a requirement that the president establish general regulations to implement the law, as well as a glossary of terms that may provide additional guidance for those seeking liability protection.<sup>113</sup>

## TAXES

Reducing FLW 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, and recipients of donated food can spend limited financial resources on other basic goods and services.

Yet food donation can 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 donating it. Some countries have sought to address this issue by offering tax incentives and removing financial barriers to food donation.

## INCENTIVES

Tax incentives can provide significant support for food donation efforts and for the reduction of FLW. For example, corporate donors may be more likely to donate surplus food to food recovery if they receive a charitable deduction to offset the cost of transportation and logistics.

Ecuador published their latest tax reform law in the Official Gazette in November 2021. The law does not provide any tax incentives that would encourage food donations.<sup>114</sup> However, the FLW Law includes a provision that directs the provincial governments to consider issuing incentives for taxpayers, including recipient organizations, facilitators, and donors.<sup>115</sup> In addition, the FLW Law directs the president, in tandem with the appropriate agencies, to determine the feasibility of tax incentives for donors, so it is possible that in the future there may be tax incentives to donate food.<sup>116</sup>

## **BARRIERS**

While certain tax schemes may encourage food donations, tax policies may also stand as potential deterrents. In many countries, the value-added tax (*Ley del Impuesto al Valor Agregado*, or VAT) creates a financial barrier to donating food. VAT is levied on a good at each stage of the supply chain, from production to the point of sale, whenever value is added.

To circumvent the VAT obstacle, countries have two main options: VAT exemption or zero-rating.<sup>117</sup> In general, if a donation is considered VAT exempt, the government does not tax the transfer of the food, but the food business cannot reclaim the input VAT it paid on business purchases along the value chain to produce it. By contrast, if a good is zero-rated, the government does not tax the transfer and still allows the food business to reclaim credit for the input VAT paid on raw materials it acquired.

In Ecuador, VAT is levied at a standard rate of 12% on many goods and services.<sup>118</sup> However, most agricultural goods and foodstuff that remain in their natural state or are not considered processed are taxed at a 0% rate, including refrigerated or packaged goods that have not undergone further processing as well as milk, cheese, yogurt, infant formula, meats, sugar, salt, bread, butter and margarine, flour, and cooking oil.<sup>119</sup> In addition, foods requiring refrigeration, cooling, or freezing to preserve them as well as oils are not considered processed and thus are subject to a 0% VAT rate.<sup>120</sup> Other foods are not explicitly covered at the 0% VAT rate in the Guide for Taxpayers Goods and Services Taxed (*Guía para Contribuyentes Bienes y Servicios Gravados con Tarifa 0% del IVA*) and therefore face a 12% VAT rate.

Given the list of exceptions, many foods are exempt from the VAT. When the VAT does not apply, food donation is easier because the donor does not need to pay any input VAT when obtaining the ingredients and thus does not need to recoup the tax paid on the item, which typically happens when the item is sold to the next vendor on the chain or to the end consumer. For all foods not specifically taxed at a 0% rate (e.g., processed foods), presumably VAT would be due at the time of the donation, meaning that either the food bank/food recovery organization or the food donor would need to pay the VAT due on the donated food. This may pose a barrier to donation, as it imposes a cost on the act of donation.

## **DONATION REQUIREMENTS**

Some countries influence business behavior and promote sustainable food systems through food donation requirements or monetary penalties for sending food to landfills (often known as organic waste bans or waste taxes). Article 12 of the FLW Law obligates anyone in the supply chain, whether foreign or domestic, that deals with food suitable for human consumption to not destroy the food.<sup>121</sup> If an entity wants to destroy food, it must justify the reason for this decision and show that it would be impossible to use it for human consumption or another specified beneficial uses (i.e., animal feed, renewable energy, compost). Thus, any entity looking to destroy food would likely need to determine that no beneficial use in the FLW Law was a feasible option, which may prove difficult. As a result, the obligation not to destroy food could dramatically reduce food waste once fully implemented and enforced.

There are also clear sanctions in the event potential donors fail to comply with the ban, as described above. Destruction of food without a valid reason is considered a serious infraction subject to a fine.<sup>122</sup> A repeat offense is considered a very serious infraction, and the fine is doubled. Outside of sanctions, the FLW Law does not

include any additional enforcement mechanisms or requirements. It will be important to watch how the government monitors the food supply chain to ensure compliance.

## 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 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 will make food donation more efficient and sustainable.

In the FLW Law, there are specific incentives outlined for donors. The incentives for donors include aspects such as:

- access to centralized marketing and communication campaigns to promote companies that adhere to the FLW Law;
- access to fairs to promote their products;<sup>123</sup> and
- training programs on sustainable agriculture, health, and the improvement of agricultural production.<sup>124</sup>

This combination of incentives encourages participation throughout the food supply chain. Additional agricultural instruction may incentivize farmers to donate food, while additional marketing and promotion opportunities may encourage retailers and those further down the food supply chain to donate.

At present, no financial incentives or grants to reduce food waste or enhance food donation are specified in the FLW Law. However, the law does direct the government to consider the potential to create additional incentives.<sup>125</sup>

## MISCELLANEOUS

Under the Organic Law of the Food Sovereignty Regime, the legislature has declared Ecuador a nation free from “transgenic crops and seeds.”<sup>126</sup> As a result, the country has stringent regulations and disclosure requirements for items that use “modern biotechnology.”<sup>127</sup> In addition to the aforementioned labeling requirements, donated food with genetically engineered components must be labeled to indicate that fact.

Moreover, in 2014, INEN introduced “traffic light” labeling protocols to warn consumers of the nutritional content of food high in salt, sugar, and fats.<sup>128</sup> The regulation explicitly exempts food supplements from the traffic light scheme.<sup>129</sup> Donated items must comply with the regulations.<sup>130</sup>

## CONCLUSION

This Legal Guide identifies Ecuador’s current laws, policies, and programs that relate to FLW and food donation. While the Ecuadorian 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 recently passed legislation to promote greater food donation and reduce FLW. The most recent development in this effort is the adoption of the Law to Prevent and Reduce Food Loss and Waste and

Reduce the Hunger of People in Vulnerable Situations (*Ley para Prevenir y Reducir la Pérdida y el Desperdicio de Alimentos y Mitigar el Hambre de las Personas en Situación de Vulnerabilidad Alimentaria*). The FLW Law creates a comprehensive framework to promote food recovery and require donations. It establishes a valuable anchor to Ecuador's FLW reduction efforts.

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 a dialogue about FLW prevention and the value of food recovery to Ecuador's food security, economic stability, and environmental sustainability. To contribute to this discussion, a separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations specific to Ecuador. In the meantime, food donors and food recovery organizations should consider the laws, policies, and legal issues discussed in this Legal Guide when donating food or distributing donated food to those in need. To better understand the regulation of food donation in Ecuador, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

# ENDNOTES

- <sup>1</sup> FOOD & AGRIC. ORG. OF THE U.N., GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011).
- <sup>2</sup> *Id.*
- <sup>3</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 1 (2016)
- <sup>4</sup> FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT: IMPACTS ON NATURAL RESOURCES 6 (2011).
- <sup>5</sup> *Id.*
- <sup>6</sup> FOOD & AGRIC. ORG. OF THE U.N., FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015), <http://www.fao.org/3/a-bb144e.pdf>.
- <sup>7</sup> *Id.*
- <sup>8</sup> FOOD & AGRIC. ORG. OF THE U.N, ET AL., THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD: SAFEGUARDING AGAINST ECONOMIC SLOWDOWNS AND DOWNTURNS 6 (2019), <http://www.fao.org/3/ca5162en/ca5162en.pdf> [https://perma.cc/C6PV-NGJ8].
- <sup>9</sup> G.A. Res. 70/1 at 22. “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.”
- <sup>10</sup> 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.
- <sup>11</sup> *Eliminating Food Loss and Waste in Ecuador through Food Banking*, THE GLOBAL FOODBANKING NETWORK (Apr. 8, 2021), <https://www.foodbanking.org/eliminating-food-loss-and-waste-in-ecuador-through-food-banking/> [https://perma.cc/V2SM-99KZ].
- <sup>12</sup> *Welcome to the SUN Movement, Ecuador!*, SCALING UP NUTRITION (May 12, 2021) <https://web.archive.org/web/20210815140150/https://scalingupnutrition.org/news/ecuador-welcome-to-the-sun-movement/> [https://perma.cc/T8AF-5VX7].
- <sup>13</sup> FLPC would like to express its gratitude to Banco de Alimentos Quito and Banco de Alimentos Diakonía as well as many other NGOs, businesses, and government agencies that shared input with the FLPC team.
- <sup>14</sup> *Food Assistance Factsheet – Ecuador*, USAID (May 26, 2020), <https://www.usaid.gov/ecuador/food-assistance> [https://perma.cc/7SPC-QFM6].
- <sup>15</sup> *Prevalence of food insecurity in Ecuador between 2014 and 2020, by degree of severity*, STATISTA (Sep. 22, 2021), <https://www.statista.com/statistics/1034328/food-insecurity-prevalence-severity-ecuador/> [https://perma.cc/C9D4-KXH6].
- <sup>16</sup> See Juan Andres Fuentes, *The Basic Structure of the Ecuadorian Legal System and Legal Research*, NYU LAW: GLOBALEX (Mar./Apr. 2021), <https://www.nyulawglobal.org/globalex/Ecuador1.html#:~:text=In%20Ecuador%2C%20the%20judiciary%20branch,of%20the%20lack%20of%20formalities> [https://perma.cc/H7AG-9TUZ]; see also Angel Torres Machuca et. al., *Ecuador*, GLOBAL ACCESS TO JUSTICE PROGRAM, <https://globalaccesstojustice.com/global-overview-ecuador> [https://perma.cc/S3YV-RTH2] (last visited Apr. 20, 2021).
- <sup>17</sup> See Fuentes, supra note 16.
- <sup>18</sup> *Id.*
- <sup>19</sup> CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DEL ECUADOR [CONSTITUTION] Oct. 20, 2008, Art. 13 (Ecuador) [hereinafter “Ecuador Constitution”].
- <sup>20</sup> *Id.* at Art. 281.
- <sup>21</sup> *Id.* at Art. 42.
- <sup>22</sup> *Id.* at Art. 51.
- <sup>23</sup> *Id.* at Art. 66.
- <sup>24</sup> See generally Ley Para Prevenir Y Reducir La Pérdida Y El Desperdicio De Alimentos Y Mitigar El Hambre De Las Personas En Situación De Vulnerabilidad Alimentaria, 30 de mayo de 2022 (Ecuador) [hereinafter “FLW Law”].
- <sup>25</sup> See Machuca, supra note 16.
- <sup>26</sup> See *id.*
- <sup>27</sup> See *id.*
- <sup>28</sup> Ecuador Constitution, supra note 19, at Art. 120.
- <sup>29</sup> *Id.* at Art. 147 (12).
- <sup>30</sup> See Fuentes, supra note 16; see also El Ministerio, MINISTERIO DE AGRICULTURA Y GANADERÍA, <https://www.agricultura.gob.ec/el-ministerio/> [https://perma.cc/55RM-8F2M] (last visited Apr. 20, 2021).
- <sup>31</sup> FLW Law, supra note 24, at Art. 7.
- <sup>32</sup> *INEN Ecuador*, INT’L ORG. FOR STANDARDIZATION (ISO), <https://www.iso.org/member/1711.html> [https://perma.cc/GB89-R3DF] (last visited Apr. 21, 2022).
- <sup>33</sup> See Kirsten Wisniewski Luxbacher, *Ecuador: Food and Agricultural Import Regulations and Standards (FAIRS) Annual Country*

Report, GAIN No: EC2019-0012 U.S. DEP'T OF AGRIC., FOREIGN AGRIC. SERV, (Jan 23, 2020). [https://agriexchange.apeda.gov.in/IR\\_Standards/Import\\_Regulation/FoodandAgriculturalImportRegulationsandStandardsCountryReportQuitoEcuador12312019.pdf](https://agriexchange.apeda.gov.in/IR_Standards/Import_Regulation/FoodandAgriculturalImportRegulationsandStandardsCountryReportQuitoEcuador12312019.pdf) [https://perma.cc/XUX4-8PLV]; see also *Objetivos*, SERVICIO ECUATORIANO DE NORMALIZACIÓN (INEN), <https://www.normalizacion.gob.ec/objetivos/> [https://perma.cc/W5XM-TG3U] (last visited Apr. 21, 2022).

<sup>34</sup> See Luxbacher, *supra* note 33.

<sup>35</sup> Ecuador – Codex Alimentarius, FOOD & AGRIC. ORG. OF THE U.N., <https://www.fao.org/fao-who-codexalimentarius/about-codex/members/detail/jp/c/15701/> [https://perma.cc/9JJ6-8HTA] (last visited Apr. 21, 2022).

<sup>36</sup> See National Decree no 1290, 30 de agosto de 2012, RO 788 (Ecuador).

<sup>37</sup> *Creación y Competencias*, AGENCIA NACIONAL DE REGULACIÓN, CONTROL Y VIGILANCIA SANITARIA, <https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2020/06/Creacio%CC%81n-y-competencias-de-Arcsa.pdf> [https://perma.cc/MD5C-F972] (last visited Apr. 21, 2022).

<sup>38</sup> See generally Health Law, 22 de diciembre 2006, RO Supplement 423 (Ecuador).

<sup>39</sup> La Dirección Ejecutiva De La Agencia Nacional De Regulación, Control Y Vigilancia Sanitaria, Diciembre 2017, ARCSA-DE-067-2015-GGG (Ecuador).

<sup>40</sup> See Luxbacher, *supra* note 33.

<sup>41</sup> See Luxbacher, *supra* note 33.

<sup>42</sup> *Creación y Competencias*, AGENCIA NACIONAL DE REGULACIÓN, CONTROL Y VIGILANCIA SANITARIA, <https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2020/06/Creacio%CC%81n-y-competencias-de-Arcsa.pdf> [https://perma.cc/MD5C-F972] (last visited Apr. 21, 2022).

<sup>43</sup> See generally FLW Law, *supra* note 24.

<sup>44</sup> FLW Law, *supra* note 24, at Art. 1.

<sup>45</sup> FLW Law, *supra* note 24, at Art. 13.

<sup>46</sup> FLW Law, *supra* note 24, at Art. 11.

<sup>47</sup> FLW Law, *supra* note 24, at Art. 7.

<sup>48</sup> FLW Law, *supra* note 24, at Art. 12 (The obligation applies regardless of whether the specific item is perishable or not.).

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> FLW Law, *supra* note 24, at Art.s 26, 27, 28.

<sup>52</sup> FLW Law, *supra* note 24, at Art. 26.

<sup>53</sup> FLW Law, *supra* note 24, at Art. 27.

<sup>54</sup> FLW Law, *supra* note 24, at Art. 16.

<sup>55</sup> FLW Law, *supra* note 24, at Art. 26.

<sup>56</sup> FLW Law, *supra* note 24, at Art. 28.

<sup>57</sup> FLW Law, *supra* note 24, at Art. 29.

<sup>58</sup> FLW Law, *supra* note 24, at Art. 14.

<sup>59</sup> FLW Law, *supra* note 24, at Chp. 3.

<sup>60</sup> FLW Law, *supra* note 24, at Art. 14.

<sup>61</sup> FLW Law, *supra* note 24, at Transitory Disposition no. 4, 12.

<sup>62</sup> FLW Law, *supra* note 24, at Art. 21.

<sup>63</sup> Ley Orgánica del Régimen de la Soberanía Alimentaria, Registro Oficial Nº 583/2009, <https://www.soberaniaalimentaria.gob.ec/pacha/wp-content/uploads/2011/04/LORSA.pdf> [https://perma.cc/XN5Y-TQWW] [hereinafter “Organic Law”].

<sup>64</sup> Normativa Técnica Sanitaria Para Donacion de Alimentos Procesados, Registro Oficial (Dec. 15, 2017) [https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2019/04/ARCSA-DE-031-2017-JCGO\\_NORMATIVA-TECNICA-SANITARIA-PARA-DONACION-DE-ALIMENTOS-PROCESADOS.pdf](https://www.controlsanitario.gob.ec/wp-content/uploads/downloads/2019/04/ARCSA-DE-031-2017-JCGO_NORMATIVA-TECNICA-SANITARIA-PARA-DONACION-DE-ALIMENTOS-PROCESADOS.pdf) [hereinafter “Technical Sanitation”].

<sup>65</sup> Obtaining Sanitary Notification of Processed Foods, AGENCIA NACIONAL DE REGULACIÓN, CONTROL Y VIGILANCIA SANITARIA (Dec. 21, 2015), <https://www.controlsanitario.gob.ec/inscripcion-de-notificacion-sanitaria-de-alimentos-procesados-fabricacion-nacional/> [https://perma.cc/SK94-S8LK][hereinafter “Sanitary Notification”].

<sup>66</sup> See e.g. Guía De Buenas, *Prácticas Pecuarias De Producción De Leche*, 30 de noviembre 2012, RO Supplement 842.

<sup>67</sup> See generally Reglamento De Alimentos, 22 de julio de 1988, RO 984 (Ecuador).

<sup>68</sup> *Id.* at Art. 132.

<sup>69</sup> See *Id.*

<sup>70</sup> Ley Orgánica Del Régimen De La Soberanía Alimentaria, Art. 1, 5 de may de 2009, RO 583 (Ecuador) [hereinafter “Food Sovereignty Law”].

<sup>71</sup> *Tax Simplicity and Progressivity Law Enacted*, DELOITTE (Jan. 10, 2020), <https://www.taxathand.com/article/12748/Ecuador/2020/Tax-Simplicity-and-Progressivity-Law-enacted> [https://perma.cc/B8FB-7PEM].

<sup>72</sup> Ecuador Constitution, *supra* note 19, at Art. 262(1),(2), and (7).

<sup>73</sup> Ecuador, URBAN AND CITIES PLATFORM OF LATIN AMERICA AND THE CARIBBEAN, <https://plataformaurbana.cepal.org/en/countries/>



- [ecuador](https://perma.cc/KEH4-VBAY) [https://perma.cc/KEH4-VBAY] (last visited Apr. 21, 2022).
- <sup>74</sup> *Ecuador*, CIA WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/ecuador> [https://perma.cc/6XTR-62GV] (last visited Apr. 21, 2022).
- <sup>75</sup> *Ecuador Country Profile*, OECD, <https://www.oecd.org/regional/regional-policy/profile-Ecuador.pdf> [https://perma.cc/MZQ2-TC23] (last visited Apr. 21, 2022).
- <sup>76</sup> Ecuador Constitution, *supra* note 19, at Art. 147(9).
- <sup>77</sup> *Ecuador*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Ecuador/Local-government> [https://perma.cc/Q9QT-SUXA] (last visited Apr. 21, 2022).
- <sup>78</sup> FLW Law, *supra* note 24, at Art. 238.
- <sup>79</sup> FLW Law, *supra* note 24, at Ch. 4.
- <sup>80</sup> FLW Law, *supra* note 24, at Art. 21.
- <sup>81</sup> FLW Law, *supra* note 24, at Art. 21.
- <sup>82</sup> FLW Law, *supra* note 24, at Art. 23, 24.
- <sup>83</sup> Organic Law, *supra* note 63.
- <sup>84</sup> Technical Sanitation, *supra* note 64.
- <sup>85</sup> Sanitary Notification, *supra* note 65.
- <sup>86</sup> FLW Law, *supra* note 24, at Art. 14.
- <sup>87</sup> *Id.*
- <sup>88</sup> *Id.*
- <sup>89</sup> *Id.*
- <sup>90</sup> FLW Law, *supra* note 24, at Transitory Disposition no. 9, 12.
- <sup>91</sup> HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC AND NATURAL RESOURCES DEFENSE COUNCIL, DON'T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY 19 (2017) [hereinafter "Food Donations"].
- <sup>92</sup> 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> [https://perma.cc/C5FM-LGPM].
- <sup>93</sup> Food Donations, *supra* note 91.
- <sup>94</sup> See Debasmita Patra et al., *Evaluation of global research trends in the area of food waste due to date labeling using a scientometrics approach*, 115 Food Control (Sept. 2020) (discussing that global confusion over date labels leads to food waste).
- <sup>95</sup> Emily Broad Leib et al., *Consumer Perceptions of Date Labels: National Survey*, FLPC, NAT'L CONSUMERS INST., & JOHNS HOPKINS CT. FOR LIVABLE FUTURE 1–2 (May 2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels\\_May-2016.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Consumer-Perceptions-on-Date-Labels_May-2016.pdf) [https://perma.cc/RV35-2A4A].
- <sup>96</sup> Formerly referred to as the Andean Pact, the trade bloc includes Bolivia, Colombia, Ecuador, and Peru.
- <sup>97</sup> See Organización de los Estados Americanos: Sistem de Información Sobre Comercio, Decision 562: Directrices para la elaboración y adopción de Reglamentos Técnicos en los Países Miembros de la Comunidad Andina y a nivel comunitario (June 25, 2003), <http://www.sice.oas.org/trade/junac/Decisiones/Dec562s.asp> [https://perma.cc/N2PF-WYTM] (establishing guidelines for the development, adoption, and application of Technical Regulations in the Andean Community Member Countries and at the community level).
- <sup>98</sup> See *generally* Rotulado De Productos Alimenticios Para Consume Humano, 30 de septiembre de 2011, NTE INEN 1334-1:2011 (Ecuador) [hereinafter "Food Products"].
- <sup>99</sup> See Food Products, *supra* note 98, at Art. 5.1.7.1(f). (Excluding pastry items that are consumed within 24 hours of manufacturing.).
- <sup>100</sup> See *id.* at Art 5.1.7.1 (a- b).
- <sup>101</sup> See *id.* at Art 3.1.20.
- <sup>102</sup> *Id.*
- <sup>103</sup> *Id.* at Art 5.1.7.1 (c).
- <sup>104</sup> *Id.*
- <sup>105</sup> FLW Law, *supra* note 24, at Art. 14.
- <sup>106</sup> FLW Law, *supra* note 24, at Art. 15.
- <sup>107</sup> FLW Law, *supra* note 24, at Transitory Disposition no. 7, 12.
- <sup>108</sup> Joseph Beckman, et. al., Promoting Food Donation: Date Labeling Law and Policy, HARVARD L. SCHOOL FOOD L. AND POL'Y CLINIC AND THE GLOBAL FOODBANKING NETWORK (Nov. 2021), <https://www.foodbanking.org/wp-content/uploads/2021/11/atlas-date-labeling-issue-brief.pdf> [https://perma.cc/3CVH-3EAS].
- <sup>109</sup> FLW Law, *supra* note 24, at Art. 11(b).
- <sup>110</sup> FLW Law, *supra* note 24, at Art. 18.
- <sup>111</sup> Código Civil de la República del Ecuador, Art. 29, 24 de junio de 2005, RO Supplement 46 (Jun 24, 2005) (Ecuador).
- <sup>112</sup> *Gross Negligence*, LEGAL INFORMATION INSTITUTE, [https://www.law.cornell.edu/wex/gross\\_negligence](https://www.law.cornell.edu/wex/gross_negligence) [https://perma.cc/NB7X-XVNV] (last visited Apr. 22, 2021).

- <sup>113</sup> FLW Law, *supra* note 24, at First Transitory Disposition.
- <sup>114</sup> *Ecuador enacts tax reform*, ERNST YOUNG (Dec. 23, 2021), [https://www.ey.com/en\\_gl/tax-alerts/ecuador-enacts-tax-reform](https://www.ey.com/en_gl/tax-alerts/ecuador-enacts-tax-reform) [https://perma.cc/SRX3-G8JQ].
- <sup>115</sup> FLW Law, *supra* note 24, at Art. 24.
- <sup>116</sup> FLW Law, *supra* note 24, at Disposition 8.
- <sup>117</sup> Regan Plekenpol, et. al., *Promoting Food Donation: Tax Law and Policy*, HARVARD L. SCHOOL FOOD L. AND POL'Y CLINIC AND THE GLOBAL FOODBANKING NETWORK (Oct. 2021), [https://www.foodbanking.org/wp-content/uploads/2021/10/2021\\_Atlas\\_Tax\\_Brief.pdf](https://www.foodbanking.org/wp-content/uploads/2021/10/2021_Atlas_Tax_Brief.pdf) [https://perma.cc/BL8W-3WV2].
- <sup>118</sup> *Ecuador Corporate – Other taxes*, PWC (July 21, 2022), [https://taxsummaries.pwc.com/ecuador/corporate/other-taxes#:~:text=Value%2Dadded%20tax%20\(VAT\),levied%20with%20a%2012%25%20VAT](https://taxsummaries.pwc.com/ecuador/corporate/other-taxes#:~:text=Value%2Dadded%20tax%20(VAT),levied%20with%20a%2012%25%20VAT) [https://perma.cc/E3MU-UJ24].
- <sup>119</sup> *Guía para contribuyentes bienes y servicios gravados con tarifa 0% del IVA*, SERVICIO DE RENTAS INTERNAS <https://www.sri.gob.ec/o/sri-portlet-biblioteca-alfresco-internet/descargar/38e837fe-49b1-460c-983e-efd39fd04303/Bienes%20y%20servicios%20gravados%20con%20tarifa%20cero%20porcentaje%20del%20IVA.pdf> [https://perma.cc/ZU9B-55TL] (last visited Aug. 17, 2022).
- <sup>120</sup> *Id.*
- <sup>121</sup> FLW Law, *supra* note 24, at Art. 12.
- <sup>122</sup> FLW Law, *supra* note 24, at Art. 26.
- <sup>123</sup> FLW Law, *supra* note 24, at Art. 19.
- <sup>124</sup> *Id.*
- <sup>125</sup> FLW Law, *supra* note 24, at Eighth Transitory Disposition.
- <sup>126</sup> Food Sovereignty Law, *supra* note 70, at Art. 26.
- <sup>127</sup> *Id.*
- <sup>128</sup> *See* Rotulado De Productos Alimenticios Procesados, Envasados Y Empaquetados, RTE INEN 022:2014, 2014, (Ecuador).
- <sup>129</sup> *See id.* at Art. 5.5.6.
- <sup>130</sup> *See id.*



© OCTOBER 2022



THE GLOBAL  
FOOD DONATION  
POLICY ATLAS