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# ECUADOR

## **RECOMMENDATIONS**

### FOOD DONATION LAW AND POLICY

OCTOBER 2022

## Authors

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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 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).



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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). The Atlas project is an innovative partnership that maps the laws and policies affecting food donation in countries across the globe and provides a comparative legal analysis based on these findings. For each country, the 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 (FLW) and increase food recovery. These issues include food safety, date labeling, liability, taxes, donation requirements and food waste penalties, 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 Guides and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations serve as a companion to the Legal Guide, though both documents may stand alone. The purpose of the recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

The document sets forth recommendations focused on Ecuador, where more than 900,000 tons of food is wasted each year<sup>1</sup> and an estimated 32.7% of the population is moderately or severely food insecure.<sup>2</sup> The discussion below provides a brief overview of the legal issues most pertinent to food donation, which the Ecuador Legal Guide explains in detail. The recommendations included in this report are not exhaustive but offer select best practices and policy solutions to reduce FLW and combat food insecurity through stronger food donation laws and policies in Ecuador.



# SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in Ecuador 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. In summary, the recommendations are as follows:

**To ensure that donated food is wholesome and safe and does not pose health risks to recipients. Also, to provide clarity on applicable food safety requirements to encourage more donations:**

- Amend the Law to Prevent and Reduce Food Loss and Waste and Reduce the Hunger of People in Vulnerable Situations (FLW Law) to feature a donation-specific section.
- Create and publish guidance on safety requirements relevant to food donation.

**To clearly differentiate between quality-based and safety-based date labels so that they do not result in the disposal of otherwise safe food:**

- Amend the Date Label Regulation to implement a dual date labeling regime.
- Promote industry and consumer education programs to raise awareness around the differences between date labels.

**To ensure robust liability protections so potential donors are not deterred from donating food due to liability concerns and to encourage self-sufficiency among food recovery organizations:**

- Remove the “free of charge” requirement for donations in the FLW Law.
- Produce and disseminate clarifying guidance on the FLW Law’s liability protection for donors.

**To ensure appropriate financial incentives for and no financial barriers to donating food:**

- Make all donated foods subject to a 0% value-added tax (VAT) rate.
- Offer tax credits for food donations made to food recovery organizations and other intermediaries.
- Provide a tax deduction for activities associated with the storage, transportation, and delivery of donated food.

**To ensure appropriate infrastructure exists to implement the FLW Law:**

- Develop government grant opportunities for food donation infrastructure.

# INTRODUCTION

Food loss and waste (FLW) represents a major environmental, economic, and social challenge in Ecuador. While the COVID-19 pandemic has increased hunger, Ecuador has also received an influx of individuals fleeing economic and political disruption in Venezuela and Colombia, which has further increased hunger and strained already limited resources. 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>3</sup> Food insecurity among children is also high. Ecuador has the second-highest level of chronic malnutrition in Latin America, with 23% of children under 5 and roughly 27% of children under 2 suffering from it.

**ECUADOR HAS THE SECOND-HIGHEST LEVEL OF CHRONIC MALNUTRITION IN LATIN AMERICA, WITH 23% OF CHILDREN UNDER 5 AND ROUGHLY 27% OF CHILDREN UNDER 2 SUFFERING FROM IT.**

Recent inflation and rising costs of basic foods have plagued countries around the globe. In Ecuador, rising food prices, among other economic and political events, have led to a strike against the government.<sup>4</sup> Amid increasing hunger and rising food costs, the government of Ecuador is implementing the recently passed 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”). The FLW Law bans those in the food supply chain from destroying food and provides a hierarchy of alternative uses for food that would previously have been lost or wasted. The alternative uses include reducing production, donating to a food recovery organization, producing animal feed, producing renewable energy, and composting.

The FLW Law directs the national and local governments to take certain steps to implement the law. For example, local governments are directed to plan and coordinate with food recovery organizations and to prioritize resources in areas with greater food insecurity. Local governments are also encouraged to establish tax incentives for food recovery organizations, those who facilitate food donations, and donors. At the national level, the president prepares general regulations to implement the law and considers the feasibility of establishing tax incentives for donors. The Ecuadorian National Standards Institute implements guidelines on date labeling to ensure the donation of food that is fit for human consumption.

The following sections briefly summarize some of the most common legal issues relevant to food donation, as identified and described in more detail in the Legal Guide, and offer policy recommendations to address these challenges.

## LEGAL CHALLENGES & POLICY RECOMMENDATIONS

### Food Safety for Donations

#### Issue Overview

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. Food recovery organizations and end users of

donated food want safe, wholesome food. Meanwhile, 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.

Ecuador has a comprehensive set of food safety laws and regulations, which are primarily overseen by two different agencies. The Ecuadorian National Standards Institute (*Servicio Ecuatoriano de Normalización*, or INEN) and the National Agency for Sanitary Regulation, Control and Surveillance (*Agencia Nacional de Regulación, Control y Vigilancia Sanitaria*, or ARCSA) set various food safety and sanitation standards and rigorously enforce them. INEN sets technical standards for food products, including labeling, best practice guides, and standards of identity.<sup>5</sup> ARCSA operates under the Ministry of Public Health and oversees various products' safety and sanitary compliance and enforcement.<sup>6</sup>

Ecuador's recently passed FLW Law<sup>7</sup> includes food safety requirements for donated food, but the requirements are not unique or specific to food donations. Rather, the FLW Law states that donated items must meet the general national food safety requirements. These include all the norms and standards implemented by INEN and the sanitary regulations promulgated by ARCSA. The norms and standards include requirements for the transportation, storage, and production of food. Donors and recipient organizations are not allowed to donate foods categorized as not suitable for consumption.<sup>8</sup> Furthermore, the FLW Law calls on ARCSA to actively "monitor and control products and foods intended for human consumption" and enforce food safety requirements.<sup>9</sup> Outside of the provision in the FLW Law, there are no additional food safety requirements specific to donated food and no additional guidance on what food safety requirements apply to donated food.

Ecuador has a robust food safety framework. However, the lack of specification regarding donated food may frustrate efforts to increase food recovery. Specifically, it is unclear whether products that fail to meet a requirement that does not raise food safety concerns (e.g., cosmetic labeling errors) are eligible for donation. Without a clear designation of food safety rules that apply to donated products, potential donors may choose an alternative way to dispose of otherwise safe, wholesome food.

## Recommended Policy Actions

1.

AMEND THE LAW TO PREVENT AND REDUCE FOOD LOSS AND WASTE AND REDUCE THE HUNGER OF PEOPLE IN VULNERABLE SITUATIONS (FLW LAW) TO FEATURE A DONATION-SPECIFIC SECTION.

The government of Ecuador should amend the FLW Law to resolve any ambiguity regarding which food safety rules apply to donated products. Under article 14, the FLW Law references the country's general food safety requirements and protocols. However, this captures the country's entire universe of food safety laws.<sup>10</sup> As a result, it is difficult for donors and recipient organizations to discern which regulations apply specifically to food donation and whether certain foods that are otherwise safe (e.g., those with cosmetic labeling errors) can be donated.

The national assembly and the president should consider amending the FLW Law to make it easier for donors to identify and comply with the safety requirements that apply to food donation. Specifically, the national assembly could propose an amendment to article 14, outlining which specific safety requirements apply to food donation instead of the general rules that are currently referenced. Article 15, which allows a company to remove their brand information, provides an example for the potential amendment. In article 15, the national assembly suggests that the most important information to include on the label can be captured by the "ingredients, expiration date, and manufacturer."<sup>11</sup> Building on this, the amended food safety section could delineate the essential food safety requirements to ensure consumer safety. This distilled list of safety requirements would

help donors and food recovery organizations better comply with the FLW Law since it will be easier for them to find the relevant food safety provisions and clearly determine which foods they can donate.

## 2. CREATE AND PUBLISH GUIDANCE ON SAFETY REQUIREMENTS RELEVANT TO FOOD DONATION.

Differentiating which regulations for food safety apply specifically to donated food can be confusing and onerous for food donors and other stakeholders. Clear guidance from oversight and enforcement agencies would ease their concerns and support increased and safer donation. Developing such guidance is a common practice in Ecuador. INEN, ARCSA, and the Phyto and Zoosanitary Regulation and Control Agency (*Agencia de Regulación y Control Fito y Zoosanitario*, or AGROCALIDAD) have published best practice guides, technical standards, and sanitary guides that the industry relies on to produce food.<sup>12</sup> These agencies should collaborate to clarify the relevant requirements for food donation. Specifically, given that INEN and ARCSA set standards for food and enforce them, their involvement in creating guidance would help alleviate concerns from food recovery organizations. In drafting guidance, the agencies should coordinate with food donation actors to identify and respond to their food safety concerns.

### 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” affixed to 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 illness-causing bacteria over time. Nevertheless, cautious donors and food recovery organizations may discard food once the date passes 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.<sup>13</sup> Similarly, 84% of Americans report throwing away food after the “expiration date” passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.<sup>14</sup> 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 regulations in Ecuador contribute to the existing confusion, thereby undermining other efforts to reduce food waste. The country is a member of the Andean Community (*Comunidad Andina*, or CAN), comprised of Bolivia, Colombia, Ecuador, and Peru.<sup>15</sup> CAN members have committed to facilitating trade across their borders and passed Decision 562 to develop and adopt more uniform technical regulations for labeling and packaging products.<sup>16</sup> Consistent with Decision 562, INEN has enacted technical standards that define what information must be included on a food product’s label 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”).<sup>17</sup>

The Date Label Regulation requires certain date markings on products.<sup>18</sup> Under the regulation, a “maximum consumption date” (*fecha máxima de consumo*) or “expiration date” (*fecha de vencimiento*) must be declared.<sup>19</sup> These two terms are used interchangeably in the regulation.<sup>20</sup> The manufacturer sets the relevant expiration date unless there is a product-specific statute.<sup>21</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>22</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>23</sup> This regulation explicitly excludes fresh fruits, vegetables, wines, alcoholic beverages, and pastry items.<sup>24</sup>

The Date Label Regulation fails to clarify the distinction between safety-based and quality-based date labels. Under the regulation, the expiration date is defined as the date after which the product “will probably not have the *quality* attributes that consumers normally expect.”<sup>25</sup> The reference to quality in this definition creates further confusion as consumers often associate date labels with safety, not quality. While some foods, such as processed meats, may require a date label because they become unsafe to eat at a certain point, the majority of foods remain safe to eat and the date label only indicates freshness.

Under Ecuador’s Date Labeling Regulation, neither the maximum consumption date nor the expiration date designates when a food would become unsafe. While the regulation allows for optional quality-based labeling, it is unclear how these two date labels can be distinguished as the expiration date is defined in reference to quality. As a result, a dual date labeling regime with one date clearly associated with food safety and one date clearly associated with food quality would reduce consumer confusion and food waste.

The FLW Law also references the existing date labeling regime as it relates to food donation. Under article 14, donated food products may include those that have “reached the end of their marketing, about to expire or expired.”<sup>26</sup> Under article 15, the expiration date must not be removed from the donated product’s packaging.<sup>27</sup> The FLW Law could provide clarity around the confusion surrounding date labels. The law directs INEN and other relevant agencies to implement guidelines on product labeling, including expiration dates and preferential consumption dates.<sup>28</sup>

## Recommended Policy Actions

### 1. AMEND THE DATE LABEL REGULATION TO IMPLEMENT A DUAL-DATE LABELING REGIME.

Ecuador has national regulations for date labeling. However, the existing scheme does not adequately explain to consumers, donors, and food recovery organizations which dates are safety based and which dates are quality based. Therefore, the national assembly should amend the Date Label Regulation to create a dual date labeling regime that differentiates between food safety and food quality. Under the Date Label Regulation, the manufacturer can choose which required expiration date label to use unless there is a product-specific statute.<sup>29</sup> However, the current regime is difficult to comprehend for manufacturers, food recovery organizations, donors, and consumers.

In recent years, the food industry and some countries have moved toward a dual-labeling practice that requires food to have only one of two standard labels. Safety-based labels, such as “use by,” denote a product that increases in risk past date. A safety-based label states a date after which there is an increased food safety risk, such as a foodborne illness. This is not the case for most food items, and, thus, a dual-labeling practice can limit circumstances where the product in question is highly perishable.<sup>30</sup> Meanwhile, quality-based labels, such as “best before,” indicate the item’s peak quality or freshness.<sup>31</sup> These products can be consumed past the quality-based date, as long as they smell and taste fine.<sup>32</sup> This type of dual date labeling regime also aligns with the 2018 update to the *Codex Alimentarius*’s General Standard for the Labeling of Prepackaged Foods.<sup>33</sup>

Ecuador should adopt the dual-labeling regime and redefine the meaning of various labels in the Date Labeling Regulation. Specifically, INEN should clarify the definition of the two expiration date labels and ensure they refer to safety, not quality. Furthermore, the government of Ecuador should approach CAN about adopting the

dual date labeling regime. INEN, as the agency responsible for date labels, could then create guidelines on expiration and preferential consumption dates.

## **2. PROMOTE INDUSTRY AND CONSUMER EDUCATION PROGRAMS TO RAISE AWARENESS AROUND THE DIFFERENCES BETWEEN DATE LABELS.**

The Ecuadorian government should invest in educational campaigns to ensure that the industry and consumers know the differences between date labels. While the dual date labeling regime is critical for reducing FLW, parties may still have difficulty understanding the various labels. For instance, a recent study from the Food and Agriculture Organization of the United Nations (FAO) in the Dominican Republic shows that consumer confusion over the national dual date labeling regime led to 37% of food waste.<sup>34</sup>

INEN, ARCSA, and other relevant agencies should partner with the food industry and food recovery organizations to craft guidance on date labels. The United Kingdom has several examples of successful education campaigns and cross-industry partnerships. UK private and public actors have partnered with the government to increase the reach of the consumer awareness effort. For instance, The Waste and Resources Action Programme (WRAP), which focuses on the circular economy and resource efficiency, published guidance on the meaning of different labels and how donors can donate surplus food past a quality-based date.<sup>35</sup> In addition, the British government has led national consumer awareness efforts focused on distinguishing quality-based and safety-based food labels, such as the “Love Food Hate Waste” and “Look, Smell, Taste, Don’t Waste” campaigns.<sup>36</sup> After establishing a dual date label regime, clear guidance and awareness are crucial to realize its potential. Ecuador can act on this insight and include a national awareness campaign as part of its implementation of the FLW Law. While new regulations would provide needed clarity, even without them a consumer awareness campaign would help consumers understand that most date labels indicate quality, not safety.

# **Liability Protection for Food Donations**

## **Issue Overview**

The lack of comprehensive liability protection for food donation can create a significant barrier to food recovery efforts. Food donors, recipient organizations, and logistical partners fear they will be held liable if an end user of a donated item falls sick. As a result, these actors may choose to discard items to limit their exposure.

The FLW Law offers robust liability protection to food donors and food recovery organizations. Under the FLW Law, donors do not have 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>37</sup> A potential donor would have to commit gross negligence to face any liability, which is the “extreme departure from ordinary care.”<sup>38</sup> While the broad liability protections benefit donors and food recovery organizations, the FLW Law requires food to be provided “free of charge” to receive liability protection, which may limit innovative models where recipients pay a nominal fee to the food recovery organization.

## **Recommended Policy Actions**

### **1. REMOVE THE “FREE OF CHARGE” REQUIREMENT FOR DONATIONS IN THE FLW LAW.**

To expand liability protection in the FLW Law, Ecuador should amend article 11(b) of the FLW Law to expressly protect donors that offer food to beneficiaries for a nominal fee. This amendment would require removing the

FLW Law’s “free of charge” requirement. Article 18 limits liability for donors, and article 11(b) defines donors as organizations providing food “free of charge.” As a result, food banks may still be liable for donations if they charge a nominal fee for the donation. This limitation may deter food donors from working with innovative recovery models such as social supermarkets (nonprofit groceries) or other low-cost operations.

If the law were changed, organizations reducing FLW and food insecurity would be permitted to charge a low price for donated food to cover start-up costs, sustain, or expand their operations. This may prove particularly useful given the new donation requirement in the FLW Law, which will likely dramatically increase the volume of food being donated. This increase could require food recovery organizations to rapidly expand. Charging a nominal fee, even on a sliding scale that changes depending on a beneficiary’s ability to pay, could increase self-sufficiency among food recovery organizations, thereby benefitting food-insecure populations. Extending liability protections to cover donations made to organizations that charge a nominal fee will help support their operations.

## **2. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON THE FLW LAW’S LIABILITY PROTECTION FOR DONORS.**

To increase the amount of food that is donated to food recovery organizations, the Ecuadorian government should produce and distribute guidance on the liability protection offered to potential food donors. Such guidance would help potential food donors understand protections provided by the FLW Law. While the new law obligates donors to not destroy food fit for human consumption, they may choose to send food that is safe to eat to alternative uses, such as animal feed or renewable energy production, unless they receive guidance that clearly indicates the scope of their liability protection. While options like sending food to become animal feed or renewable energy are also beneficial, they do not help reduce hunger—one of the primary goals of the FLW Law. By increasing awareness of liability protection, food donations are likely to increase, thereby reducing hunger.

## **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 FLW. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

There are currently no tax incentives for food donation in Ecuador. The FLW Law includes a provision that directs the provincial governments to consider issuing tax incentives for taxpayers, including recipient organizations, facilitators, and donors.<sup>39</sup> In addition, the FLW Law also directs the president, in tandem with appropriate agencies, to determine the feasibility of tax incentives for donors.<sup>40</sup>

As for tax barriers, there are few barriers for those that wish to donate food in Ecuador. While Ecuador has a value-added tax (VAT), raw foods and many other staples are exempt. Some processed foods, such as those not explicitly included in the list of goods taxed at a 0% VAT rate, are subject to a 12% VAT rate. This may make some donors reluctant to donate those foods because they would have to pay a tax based on the value they added to the processed food, which they are not able to recover when they donate that item.

## Recommended Policy Actions

### 1. MAKE ALL DONATED FOOD SUBJECT TO A 0% VALUE-ADDED TAX (VAT) RATE.

Most agricultural goods and foods that remain in their natural state are not considered processed and are taxed at a 0% VAT rate, including refrigerated or packaged goods that have not undergone further processing as well as certain staple foods such as milk, cheese, yogurt, infant formula, meats, sugar, salt, bread, butter and margarine, flour, and cooking oil.<sup>41</sup> In addition, foods requiring refrigeration, cooling, or freezing for preservation are not considered processed, and thus are subject to a 0% VAT rate.<sup>42</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.

Identifying which foods are subject to the 12% VAT rate can be burdensome for food donors and may unnecessarily limit the amount of food they choose to donate. By treating all food donations the same and taxing every donation at the 0% VAT rate, it creates administrative efficiency and ensures that the VAT is not a barrier to food donation.

### 2. OFFER TAX CREDITS OR DEDUCTIONS FOR FOOD DONATIONS MADE TO FOOD RECOVERY ORGANIZATIONS AND OTHER RECIPIENT INTERMEDIARIES.

The FLW Law prevents potential donors from disposing food in any way other than its stated options (e.g., donation, animal feed, renewable energy, etc.). While this approach reduces waste and ensures that food is put to beneficial uses, the various options give food donors alternatives that may limit the amount of food they donate to efforts to reduce hunger. For instance, a potential donor may decide that disposing of food as animal feed is an easier alternative than properly storing and delivering food to a food bank. To avoid this possibility and encourage potential food donations, the government should offer tax credits or deductions for donors that choose to send food to recovery organizations instead of another available alternative under the FLW Law.

While a tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donation is more likely to encourage donation among farmers and smaller donors that may not generate as much income during the year. Compared with a tax deduction, which reduces a taxpayer's taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.<sup>43</sup> Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than a tax deduction.

A tax credit or deduction could be offered at the national level and vary in design. For example, the Ecuadorian government may elect to limit the total credit or deduction in a given tax year by capping a percentage of the value of donated food or the total dollar amount or percentage of income of the credit or deduction that can be claimed. Before adopting such limits, the government should balance the benefit with the potential deterrent effect that the limits may have on food donation. At minimum, donors should be permitted to claim a deduction up to 10% of their taxable income, as is the case in Costa Rica and South Africa.<sup>44</sup> However, best-practice countries use caps that exceed 10%, if they implement caps at all. For example, Colombia offers tax deductions and credits equivalent to 25% of the value of donations in the taxable year with no cap.<sup>45</sup>

### 3. PROVIDE A TAX DEDUCTION FOR ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION, AND DELIVERY OF DONATED FOOD.

Those who choose to donate food under the FLW Law may incur new, additional costs such as those associated with storing, transporting, and delivering food that would previously have been disposed of. In light of these

new costs, Ecuador should offer a tax deduction that offsets some of these new expenses. This would increase the financial benefit companies receive when donating food and encourage them to develop the infrastructure necessary to store, transport, and deliver food rather than those used for alternatives like animal feed.

In France, for example, the national tax scheme provides charitable donation tax credits, which individual or corporate donors can claim not just for the value of the donated food but also for costs associated with its transportation and storage.<sup>46</sup> The tax scheme looks to the “cost price” of the service, which focuses on the total cost the donor accumulates for the item’s storage or delivery.<sup>47</sup> Accounting for the logistical expenses has already made a significant difference in the total costs a potential donor has to incur to send food items to a nonprofit organization in the country. E.Leclerc, a supermarket chain in France, has calculated that the tax break lowers the cost of shipping one ton of produce to a food recovery organization from €372 to €65.69.<sup>48</sup>

## Government Grants and Incentives

### Issue Overview

National or local grants and incentive programs can be important resources for food donation initiatives, especially as alternatives or supplements to tax incentives. Government-assisted funding is particularly important in Ecuador, where a lack of infrastructure and capital limits food recovery efforts. For example, government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable. Ecuador does not currently offer any national grants for food donation infrastructure needs.

### Recommended Policy Actions

#### **1. DEVELOP GOVERNMENT GRANT OPPORTUNITIES FOR FOOD DONATION INFRASTRUCTURE.**

Grants and incentive programs funded at the national, provincial, or local levels offer an important resource for food donation initiatives, as cost is a main barrier preventing food businesses from donating. More specifically, transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food.<sup>49</sup> This is particularly true in countries like Ecuador, where the FLW Law obligates donors not to destroy food and new infrastructure must be established to handle food that was previously disposed of. Accordingly, the Ecuadorian government could establish grant programs targeted at creating infrastructure to store, transport, and deliver food to food recovery organizations.

A number of countries have grant programs to encourage food recovery. For example, in 2019 Argentina’s Ministry of Agribusiness launched a contest to grant nonreimbursable financing for innovative food waste solutions in the country’s horticultural sector.<sup>50</sup> The grant is administered under the government’s National Food Loss and Waste Reduction Program and in partnership with the Inter-American Development Bank. The Ecuadorian government could create a similar grant program to help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The government could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

# CONCLUSION

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While these Policy Recommendations are intended to help strengthen food donation in Ecuador, they are not exhaustive. Those committed to reducing FLW 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

- <sup>1</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].
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- <sup>3</sup> *Id.*
- <sup>4</sup> Leo Sands, *Ecuador protests: Indigenous leaders agree to call off strikes*, BBC (July 1, 2022), <https://www.bbc.com/news/world-us-canada-62005216> [https://perma.cc/4RY9-Y82A].
- <sup>5</sup> See e.g. Guía De Buenas, *Prácticas Pecuarias De Producción De Leche*, 30 de noviembre 2012, RO Supplement 842; *Normativa Técnica Sanitaria Para Alimentos Procesados*, 1 de febrero 2016, RO Supplement 681; 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].
- <sup>6</sup> See National Decree no 1290, 30 de agosto de 2012, RO 788 (Ecuador).
- <sup>7</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>8</sup> *Id.* at Art. 14.
- <sup>9</sup> *Id.* at Transitory Disposition no. 9, 12.
- <sup>10</sup> *Id.* at Art. 14.
- <sup>11</sup> *Id.* at Art. 15.
- <sup>12</sup> See e.g. Buenas, *supra* note 5.
- <sup>13</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>14</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>15</sup> Formerly referred to as the Andean Pact, the trade bloc includes Bolivia, Colombia, Ecuador, and Peru.
- <sup>16</sup> 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* (jun. 25, 2003), <http://www.sice.oas.org/trade/junac/Decisiones/Dec562s.asp> [https://perma.cc/UQS4-V44Y] (providing guidelines for the development, adoption, and application of Technical Regulations in the Andean Community Member Countries and at the community level).
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- <sup>18</sup> See *id.* at Art. 5.1.7.1(f).
- <sup>19</sup> See *id.* at Art. Art 5.1.7.1(a- b).
- <sup>20</sup> See *id.* at Art. Art 3.1.20.
- <sup>21</sup> *Id.*
- <sup>22</sup> *Id.* at Art. 5.1.7.1(c).
- <sup>23</sup> *Id.*
- <sup>24</sup> *Id.* at Art. 5.1.7.1(f) (excluding pastry items that are consumed within 24 hours of manufacturing).
- <sup>25</sup> See *id.* at Art 3.1.20.
- <sup>26</sup> FLW Law, *supra* note 7, at Art. 14.
- <sup>27</sup> *Id.* at Art. 15.
- <sup>28</sup> *Id.* at Transitory Disposition no. 7 (declaring agencies have 180 days following the implementation of the Bill to enact new guidelines).
- <sup>29</sup> Food Products, *supra* note 17, at Art. 3.1.20.
- <sup>30</sup> Waste & Res. Action Programme et al., *Labelling guidance: Best practice on food date labelling and storage advice* 18 WRAP (2019), <https://wrap.org.uk/sites/default/files/2020-07/WRAP-Food-labelling-guidance.pdf> (last visited Oct. 25, 2021) [hereinafter WRAP Labelling Guidance Best Practice].
- <sup>31</sup> *Id.* at 19.
- <sup>32</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 8 (Nov. 2021), <https://www.foodbanking.org/wp-content/uploads/2021/11/atlas-date-labeling-issue-brief.pdf> [https://perma.cc/3CVH-3EAS].
- <sup>33</sup> See FAO AND WHO, *CODEx ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS*, CXS 1-1985, 2 (Rev. 2018), <http://www.fao.org/fao-who-codexalimentarius/sh-proxy/>

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- <sup>34</sup> Melissa Shapiro, et. al., Global Food Donation Policy Atlas Dominican Republic Policy Recommendations HARVARD L. SCHOOL FOOD L. AND POL'Y CLINIC AND THE GLOBAL FOODBANKING NETWORK 7 (Mar. 2021), <https://www.foodbanking.org/wp-content/uploads/2021/03/Dominican-Republic-Recommendations-v2.pdf> [https://perma.cc/2AAN-TM63] (citing Gero Vaagt, Pérdida de Alimentos en República Dominicana y Recomendaciones de Redistribución, FAO 14, 15 (2014), [http://www.fao.org/fileadmin/user\\_upload/FAO-countries/Republica\\_Dominicana/docs/Presentacion\\_Final\\_Pérdida\\_Alimentos\\_RD\\_Octubre\\_2014.pdf](http://www.fao.org/fileadmin/user_upload/FAO-countries/Republica_Dominicana/docs/Presentacion_Final_Pérdida_Alimentos_RD_Octubre_2014.pdf) [https://perma.cc/A98P-5UHM]).
- <sup>35</sup> Joseph Beckman, et. al., The Global Food Donation Policy Atlas United Kingdom Legal Guide: Food Donation Law and Policy, HARVARD L. SCHOOL FOOD L. AND POL'Y CLINIC AND THE GLOBAL FOODBANKING NETWORK 9 (2021), <https://www.foodbanking.org/wp-content/uploads/2021/04/UK-Legal-Guide-v2.pdf> [https://perma.cc/7WAH-H7B2].
- <sup>36</sup> Yvette Cabrera, *The UK Is Winning on Food Waste. Are We?* (Jul. 30, 2020), <https://www.nrdc.org/experts/yvette-cabrera/uk-winning-food-waste-are-we-0> [https://perma.cc/9FBZ-QQ3].
- <sup>37</sup> FLW Law, *supra* note 7, at Art 18.
- <sup>38</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] [https://perma.cc/69M4-7W9L] (last visited Apr. 22, 2021).
- <sup>39</sup> FLW Law, *supra* note 7, at Art 24.
- <sup>40</sup> FLW Law, *supra* note 7, at Disposition 8.
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- <sup>43</sup> See HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 19-20 (2016), [https://chlp.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](https://chlp.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf) [https://perma.cc/K6LK-SSC5].
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- <sup>46</sup> *Id.*
- <sup>47</sup> *Id.*
- <sup>48</sup> *Id.*
- <sup>49</sup> Food Waste Reduction All., *Analysis of U.S. Food Waste Among Food Manufacturers, Retailers, and Restaurants* 17 (2016), [https://foodwastealliance.org/wp-content/uploads/2020/05/FWRA-Food-Waste-Survey-2016-Report\\_Final.pdf](https://foodwastealliance.org/wp-content/uploads/2020/05/FWRA-Food-Waste-Survey-2016-Report_Final.pdf) [https://perma.cc/MVG7-JK9P].
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