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NIGERIA  
**LEGAL  
GUIDE**

FOOD DONATION  
LAW AND POLICY

SEPTEMBER 2022

## Authors

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## Acknowledgments

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 advice and support of our on-site partners in Nigeria, with whom we discussed the ideas provided here, including Lagos Food Bank Initiative, and many other NGOs, businesses, and government agencies.

## 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.

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# 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> At the same time, current data indicate that between 720 and 811 million people were hungry in 2020<sup>3</sup> and that more than 2 billion people were unable to regularly access safe, nutritious food in 2019.<sup>4</sup> Thoughtful public policies can help address these troubling trends and augment food system resilience, aiding in food recovery for social benefit and mitigating the environmental costs of excess production and loss.

FLW occurs at every stage of the supply chain and generates significant social, environmental, and economic costs. Food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,<sup>5</sup> using roughly 28% of agricultural land<sup>6</sup> and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.<sup>7</sup> Collectively, this damage costs approximately 389.63 trillion Nigerian nairas (NGN, ₦), or US\$924.2 billion per year.<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 (SDG) 12.3.<sup>9</sup>

In many countries, food donation has emerged as a popular and logical solution to redirect safe, surplus food destined for landfills into the hands of those who need it most. Most food donations are facilitated through food banks or other charitable, 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 Nigeria**, where approximately 40% of food produced is lost after harvest,<sup>11</sup> even while nearly 116 million people are moderately or severely food insecure.<sup>12</sup> FLPC and GFN, in collaboration with partners in Nigeria,<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 in Nigeria. This Legal Guide 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 Nigeria, this Legal Guide provides an overview of the legal frameworks most relevant to food donation at the national and local levels. The subsequent sections

look more closely at the laws generally applicable to food donation: food safety laws and regulations, food date labeling laws, “Good Samaritan” or liability protection laws, tax incentives for food donation and/or tax policy disincentives, waste diversion laws that penalize food waste or require donation or recovery, national food waste policies or strategies, government grants and incentives for donation, and other miscellaneous laws relevant to food waste mitigation and food donation. The extent to which Nigeria has developed and subsequently implemented these legal frameworks compared to other countries may vary.

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

Nigeria is Africa’s largest economy, with a gross domestic product (GDP) of US\$440 billion (₦182.8 trillion).<sup>14</sup> Nigeria is also Africa’s most populous country, and its current population of 214 million is expected to grow to 400 million by 2050.<sup>15</sup> Despite the country’s large GDP, 39% of Nigerians lived below the national poverty line in 2019.<sup>16</sup> At the same time, nearly 116 million people were moderately or severely food insecure.<sup>17</sup>

### Nigeria by the numbers<sup>18</sup>

Population <b>214,028,000</b>	Prevalence of Food Insecurity <b>44.1%</b>	World Bank Classification <b>Lower middle income</b>
Median Age <b>18.1 years</b>	Global Food Security Index (2018) <b>96 out of 113</b>	Human Development Index <b>0.534</b>
GDP (US\$) <b>\$440 billion</b>	GINI Index <b>43</b>	FLW Estimates (metric tonnes/year) <b>37.9 million</b>
Poverty Rate <b>46%</b>	Food Insecurity Index <b>48.4</b>	

The Nigerian government has implemented interventions to promote food security. The Constitution of the Federal Republic of Nigeria directs states to ensure that all Nigerians always have adequate food.<sup>19</sup> Nigeria has passed several policies with the goal of improving food security. In 2016 it published its National Policy on Food and Nutrition in Nigeria to promote food security for all Nigerians.<sup>20</sup> In 2017 Nigeria adopted the Agriculture Sector Food Security and Nutrition Strategy to tap its rich agricultural potential to reduce poverty and end hunger by 2035.<sup>21</sup>

Nigeria also has committed to several regional and global initiatives aimed at ending hunger and improving food security. Nigeria is part of the Comprehensive African Agriculture Development Programme (CAADP), which provides a framework for transforming the agriculture sector.<sup>22</sup> Nigeria also belongs to the Economic Community of West African States (ECOWAS) Zero Hunger Initiative, which brings together governmental and nongovernmental partners to work towards a hunger-free West Africa. The initiative aims to build on existing policies and programs, increase stakeholder engagement, and amplify the current political commitment in the region.<sup>23</sup> Nigeria also signed the Malabo Declaration, a commitment by several African leaders to achieve zero hunger and reduce stunting in 10% of children.<sup>24</sup>

Despite significant hunger and the government’s focus on food security, Nigeria wastes nearly 38 million tons of household food each year.<sup>25</sup> Around 40% of all food produced is lost or wasted.<sup>26</sup> Most FLW is driven by

climate variability, poor harvest and harvesting practices, inadequate infrastructure connecting agricultural centers with population centers, minimal cooling and refrigeration, and inadequate management of food waste.<sup>27</sup> For example, research shows that up to 45% of food in Nigeria spoils annually because of poor cooling infrastructure.<sup>28</sup> High rates of food waste indicate that Nigeria, like much of the world, is falling behind its commitment to cut food waste in half by 2030 under the United Nations' SDG 12.3.<sup>29</sup> In 2020 Nigeria updated the National Policy on Solid Waste Management, identifying cafes, restaurants, hotels, food stalls, agriculture, and food processing facilities as major sources of solid waste.<sup>30</sup> The policy urges the public to use organic waste to produce compost, but it does not identify or establish a path to reducing food waste.<sup>31</sup> Several nonprofit and private-sector initiatives address FLW in Nigeria including the Postharvest Loss Alliance for Nutrition (PLAN) led by the Global Alliance for Improved Nutrition (GAIN), which addresses the loss and waste of nutrient-dense, perishable foods.<sup>32</sup>

**DESPITE SIGNIFICANT HUNGER AND THE GOVERNMENT'S FOCUS ON FOOD SECURITY, NIGERIA WASTES NEARLY 38 MILLION TONS OF HOUSEHOLD FOOD EACH YEAR. AROUND 40% OF ALL FOOD PRODUCED IS LOST OR WASTED.**

In addition to these policy responses, private-sector actors, including food banks, actively promote the rescue and donation of surplus food to mitigate hunger and food insecurity. Lagos Food Bank Initiative (hereinafter "Lagos Food Bank") plays a critical role in the collection and delivery of donated and rescued food to communities in need.<sup>33</sup> It currently works with more than 150 partner NGOs in Lagos and other parts of the country.<sup>34</sup> In 2020 Lagos Food Bank and its partners distributed an estimated 9.6 million meals and recovered 14,054 kilograms of food.<sup>35</sup> It makes an impact through various programs such as the Temporary Food Assistance Program (TEFAP) targeted at providing immediate food and nutrition assistance to families in low-income communities in Lagos and the surrounding communities.<sup>36</sup> Through the TEFAP, the food bank provides shelf-stable food items to needy individuals biweekly.<sup>37</sup>

As Nigeria seeks to reduce FLW and mitigate food insecurity, it is critical that Lagos Food Bank and other actors recognize and understand the laws that apply to food donation. The remaining sections of this Legal Guide provide an overview of Nigeria'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 NIGERIA'S RELEVANT LEGAL FRAMEWORK**

Nigeria's laws impacting food loss, waste, recovery, and donation are predominantly adopted at the national level. The Constitution of the Federal Republic of Nigeria is the primary and supreme source of law, taking precedence over all other forms of law, written and unwritten.<sup>38</sup> Under the constitution are statutes, judicial precedents (case law), customary law, and Shari'ah (Islamic) law.<sup>39</sup> The constitution also establishes a three-tier government system, with power distributed between the federal, state, and local governments.<sup>40</sup>

The federal government has both executive and legislative branches.<sup>41</sup> The executive branch includes the president, vice-president, and minister of the government.<sup>42</sup> Legislative power is held by the National Assembly, which includes a Senate and a House of Representatives.<sup>43</sup> The National Assembly makes laws that have national application.<sup>44</sup> The constitution also establishes 36 states and a House of Assembly for each state.<sup>45</sup> Laws enacted by the House of Assembly apply only in the respective states.<sup>46</sup> The constitution also distributes functions between the federal and state governments and allows some functions to concurrently fall under the jurisdictions of both.<sup>47</sup> In addition, the constitution establishes 774 local government areas, six area councils, and the federal capital territory, Abuja.<sup>48</sup> Local government councils are charged with "participating

in the economic planning and development” of the local government area.<sup>49</sup> The federal government leads the promotion of food security, food safety, and agriculture.<sup>50</sup> State governments ensure suitable and adequate food.<sup>51</sup> Local government councils develop agriculture and natural resources plans.<sup>52</sup>

## **NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL ACT**

While several national frameworks regulate food products in Nigeria, most food safety and date labeling requirements relevant to food donation are set forth in the National Agency for Food and Drug Administration and Control Act (NAFDAC Act)<sup>53</sup> and the Food and Drug Act.<sup>54</sup>

To ensure compliance with the provisions therein, the NAFDAC Act established the National Agency for Food and Drug Administration and Control (NAFDAC) under the Federal Ministry of Health to oversee the manufacture, distribution, advertisement, sale, and use of food, drugs, cosmetics, chemicals, detergents, medical devices, and packaged water.<sup>55</sup> The Act also established a Governing Council, to advise the federal government, as well as establish standards, guidelines, and programs for the quality and safety of food, drugs, and cosmetics, among others.<sup>56</sup> The Council can also draft regulations to implement the Act<sup>57</sup> with the approval of the minister of health.<sup>58</sup> The Act also gives powers to NAFDAC officials to enter and inspect any premises where food products are being “manufactured, prepared, preserved, packaged, stored or sold.”<sup>59</sup>

Pursuant to its delegated authority, NAFDAC enacted the Pre-Packaged Food, Water and Ice Labelling Regulations (2019) to regulate the labeling of prepackaged food products.<sup>60</sup> It also published the NAFDAC Guidelines for Food Hygienic Practices (NGFHP) to provide guidance on hygienic requirements in the preparation, storage, distribution, and transport of food products.<sup>61</sup>

As discussed later in the Legal Guide, the NAFDAC Act and its accompanying regulations on food safety and labeling presumably apply to food that is donated free of charge, although none feature donation-specific sections or explicitly reference food donation. Nevertheless, the provisions contained therein have practical impacts on food recovery and food donation efforts.

## **FOOD AND DRUGS ACT (FDA)**

The Food and Drugs Act (FDA) regulates the manufacture, sale, and advertisement of food, drugs, cosmetics, and devices.<sup>62</sup> The FDA prohibits the sale, importation, manufacture, or storage of food that is “adulterated” or “stored under insanitary conditions.”<sup>63</sup> It defines “selling” to include “having in possession for sale or *distribution*.”<sup>64</sup> It prohibits the sale, importation, manufacture, or storage of food that contains a “poisonous or harmful substance, is unfit for human consumption or consists in whole or in part of any filthy, disgusting, rotten or diseased substance.”<sup>65</sup>

Regarding enforcement, the FDA gives the minister of health powers to obtain information about substances used in food preparation.<sup>66</sup> Inspecting officers can enter any premise where food products are manufactured, prepared, preserved, packaged, stored, or sold.<sup>67</sup> The minister may also regulate various areas, including determining what constitutes an adulterated food, setting standards around food quality, setting authorized contamination levels, and setting standards to protect consumer health.<sup>68</sup>

As discussed later in this Legal Guide, the FDA does not explicitly reference food donation. However, the FDA broadly applies to any food, defined as “any article manufactured, processed, packaged, sold or advertised for use as food or drink for human consumption, chewing gum and any ingredient which may be mixed with food for any purpose.”<sup>69</sup> Like the NAFDAC Act, the FDA presumably applies to food offered for sale and food donated free of charge. Although the FDA does not feature donation-specific sections or explicitly reference food donation, the provisions contained therein have practical impacts on food recovery and food donation efforts.

## OTHER FEDERAL LAWS

In addition to the aforementioned legal frameworks, other national laws directly or indirectly impact food recovery and food donation in Nigeria. Other relevant laws include the Federal Competition and Consumer Protection Act (FCCPA), which establishes the controlling liability scheme to which food donors and food recovery organizations are subject in the event a beneficiary is harmed.<sup>70</sup> Additionally, the Companies Income Tax Act<sup>71</sup> and the Value Added Tax Act, which govern the national tax system,<sup>72</sup> and the Counterfeit and Fake Drugs and Unwholesome Processed Foods Act, which prohibits the manufacture, sale, and distribution of adulterated or unwholesome processed foods,<sup>73</sup> are relevant to food donation and are discussed later in this Legal Guide.

## STATE AND LOCAL GOVERNMENT LAWS

Within the authority granted via the constitution, Houses of Assembly in the states can also pass laws that may impact food loss, waste, and recovery.<sup>74</sup> Nigeria is divided into 36 states and a federal capital territory.<sup>75</sup> As mentioned earlier, states may enact their own state laws on certain matters, including food. The constitution establishes 774 local government areas, six area councils, and the federal capital territory, Abuja.<sup>76</sup> In particular, local government councils govern the development of agriculture and natural resources.<sup>77</sup> For example, the Karu Local Government Council enacted a bylaw that empowers the local government environmental health officer to oversee food safety inspections, among other duties.<sup>78</sup> To date, no legislation or regulation at the state or local level addresses food donation directly.

**NIGERIA IS DIVIDED INTO 36 STATES AND A FEDERAL CAPITAL TERRITORY... STATES MAY ENACT THEIR OWN STATE LAWS ON CERTAIN MATTERS, INCLUDING FOOD.**

# LEGAL ISSUES RELEVANT TO FOOD DONATION

## FOOD SAFETY FOR DONATIONS

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. While Nigeria has national food safety standards, relevant laws and regulations do not directly address food safety rules for food donation. Food safety laws in Nigeria are mostly contained in the National Agency for Food and Drug Administration and Control Act (NAFDAC Act), the Food and Drugs Act (FDA), and the Counterfeit and Fake Drugs and Unwholesome Processed Foods Act.

The NAFDAC Act established the National Agency for Food and Drug Administration and Control (NAFDAC) to regulate and control the sale and distribution of food as well as ensure food safety in Nigeria.<sup>79</sup> In 2019 NAFDAC published the Guidelines for Food Hygienic Practices (NGFHP) to specify food hygiene and safety requirements in the food industry.<sup>80</sup> The guidelines also apply to community-based organizations and NGOs, which presumably include food recovery organizations.<sup>81</sup> Of relevance to food donation, the guidelines require food handlers (defined as any individual directly handling packaged or unpackaged food and related equipment) and

establishments (defined as any building where food is handled) to ensure that facilities, equipment, and storage effectively protect food from contamination.<sup>82</sup> They also require that food be transported in an appropriate way to avoid contamination.<sup>83</sup> Even though the guidelines do not explicitly reference food donation, they apply to NGOs that handle food and therefore most likely apply to food banks that receive, process, and distribute food.

In addition, the FDA prohibits any person from selling, importing, manufacturing, or storing food that contains “any poisonous or harmful substance; is unfit for human consumption; or consists in whole or in part of any filthy, disgusting, rotten or diseased substance.”<sup>84</sup> The FDA also prohibits the “sale, importation, manufacture, or storage of food that is adulterated or stored under insanitary conditions.”<sup>85</sup> Selling is defined as “offering for sale, exposing for sale, and having in possession for sale or *distribution*.”<sup>86</sup> While the FDA does not explicitly reference food donation, a broad interpretation of the Act suggests it would apply to food recovery organizations that handle, store, and distribute donated food.

The Counterfeit and Fake Drugs and Unwholesome Processed Foods Act prohibits the manufacture, sale, and distribution of adulterated or unwholesome processed foods.<sup>87</sup> Unwholesome processed food refers to food that contains “filthy, putrid, or decomposed” substances or that has been prepared or *stored* under insanitary conditions that could render the food injurious to health.<sup>88</sup> Adulterated processed food is defined as any product manufactured in facilities that do not conform to “current good manufacturing practice[s]” that ensure product safety, quality, and purity.<sup>89</sup> While the Act does not explicitly reference food donation, it covers both storage and distribution of food. This suggests it would apply to facilities that handle and distribute donated food.

Since relevant legislation and regulations do not specifically mention food donation, there is no agreed regulatory position on whether all donated food must comply with all their requirements, even if the given requirement does not relate to food safety. For example, there is no guidance on whether food can be donated if a labeling flaw prevents its sale but does not impact its safety. As a result, food donors should presume they must comply with all food safety provisions.

## DATE LABELING

Misconceptions about food date labels---like “sell by,” “use by,” or “best by”---are a major contributor to food waste. Most food donors and food recovery organizations are appropriately cautious about complying with safety standards when donating food, but it is not always clear which date labeling standards relate to food safety. While fruits, vegetables, and other fresh products that are no longer safe to consume appear visibly spoiled, it can be more difficult to discern the safety of 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 it unfit for human consumption.

Despite this interpretation, date labels indicate freshness or quality--rather than food safety--for the vast majority of foods. Manufacturers use a variety of quality-based methods to determine the time frame for date labels, all of which are intended to reflect when the food will be at its “peak quality.”<sup>90</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>91</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>92</sup>

Nigeria’s date labeling scheme is set out in the Pre-Packaged Food, Water and Ice Labelling Regulations (2019)<sup>93</sup> (hereinafter the Labeling Regulations) under the NAFDAC Act.<sup>94</sup> The Labeling Regulations apply to all prepackaged food products, including water and ice.<sup>95</sup> They require all “pre-packaged food to specify and display the day, month and year of manufacture on the label.”<sup>96</sup> Additionally, they establish a dual date labeling scheme for prepackaged food that distinguishes between safety-based and quality-based labels.<sup>97</sup> The Labeling Regulations requires all pre-packaged food products to feature a “use-by date” or “expiration date” or a

“best-before-date” or “best-before-quality-date,” depending on the type of the food product.<sup>98</sup> They require a “use-by date” or “expiration date” on all products that “must be consumed before a certain date to ensure its safety and quality.”<sup>99</sup> Prepackaged food past the “use-by date” regardless of quality should not be regarded as marketable.<sup>100</sup> For any other prepackaged food products that do not require a safety-based label, the Labeling Regulations require a “best-before date” or “best quality before date.”<sup>101</sup> The Labeling Regulations list several types of foods that are exempt from this requirement to indicate a “best-before-date.” This includes fresh fruits and vegetables, tubers, alcoholic beverages, pastries, vinegar, non-iodized food, and nonfortified solid sugar.<sup>102</sup>

Furthermore, the Labeling Regulations do not permit the distribution of food “whose expiry date has expired,”<sup>103</sup> meaning food past the “use-by date.” However, they do state that food past the “best-before date” may be “still be acceptable for consumption,”<sup>104</sup> yet do not explicitly permit their distribution. Since the Labeling Regulations apply to all prepackaged food, the labeling requirements presumably apply to prepackaged food that is donated free of charge, though it is unclear whether the restriction on distributing past-date food applies to donated food.

THE LABELING REGULATIONS DO NOT PERMIT THE DISTRIBUTION OF FOOD “WHOSE EXPIRY DATE HAS EXPIRED,” MEANING FOOD PAST THE “USE-BY DATE.” HOWEVER, THEY DO STATE THAT FOOD PAST THE “BEST-BEFORE DATE” MAY BE “STILL BE ACCEPTABLE FOR CONSUMPTION,” YET DO NOT EXPLICITLY PERMIT THEIR DISTRIBUTION.

The Labeling Regulations align with the 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods, which endorses a dual-date labeling scheme, with food using either a “best before” label to indicate quality or a “use by” label to indicate safety.<sup>105</sup> Specifically, the “use by” date is intended to convey the last date on which the product should be sold or consumed due to safety *and* quality reasons.<sup>106</sup> The *Codex Alimentarius* advises that the “use by” date or “expiration date” only be applied to foods that pose an increased risk to health over time.<sup>107</sup> For all other foods, it recommends a quality-based label, expressed as “best before,” *instead of* the safety-based label.<sup>108</sup> Despite the clear distinction between quality and safety labels, the Labeling Regulations do not explicitly state whether food can be donated past the quality-based date, which may create a barrier for food donors and food recovery organization donating wholesome, edible food. In addition, there is currently no guidance on how the Labeling Regulations apply to donated food, or other guidance clarifying whether food past the quality date can be donated.

## LIABILITY PROTECTIONS FOR FOOD DONATION

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 if they follow food safety rules. In contrast, Nigeria does not provide comprehensive legal protections for food donors and food recovery organizations.

The primary law regulating consumer protection and liability in Nigeria is the Federal Competition and Consumer Protection Act (FCCPA).<sup>109</sup> The FCCPA promotes competition, protects and promotes the interests of consumers, restricts unfair business practices, and supports economic growth in Nigeria.<sup>110</sup> Of relevance to food donation, the FCCPA establishes the right to safe and good quality goods for consumers as well as creates a right of action for consumers related to claims of harm arising from goods.<sup>111</sup>

The FCCPA promotes the rights and safety of consumers and governs liability with respect to defective or unsafe goods.<sup>112</sup> It holds any *undertaking*, defined as any person involved in the production or trade of goods, liable for any damages resulting from the supply of defective goods or service.<sup>113</sup> The FCCPA defines “trade” as any business “relating to the supply” of goods<sup>114</sup> and defines “supply” to include supply by gift,<sup>115</sup> meaning food donors and food recovery organizations would likely be considered “involved in the production or trade of goods.” Given that “supply” covers gifts, a donation of defective food (“goods or service”) that results in damage such as personal injury could result in liability for food donors or food recovery organizations.

When applied, the FCCPA establishes a strict liability scheme. It holds persons who supply a defective service or good, such as food, liable for any damages resulting from the supply, whether or not a consumer bought the good or service from the person supplying it.<sup>116</sup> The FCCPA does not provide any defenses for damages or injury resulting from the supply of defective goods or services,<sup>117</sup> and it states that persons involved in the production or trade of goods or services shall not be shielded from liability.<sup>118</sup> Moreover, if a consumer alleges injury or damages resulting from the supply of goods or services, the burden is on the supplier to prove that the goods were not defective.<sup>119</sup> In the food donation context, this means food donors and food recovery organizations would be subject to strict liability for any injury or damages stemming from donating or distributing defective food, and the burden of proof to show the food was not defective would fall on the food donors and food recovery organizations.

Food donors and food recovery organizations should ensure that donated food complies with applicable laws, including those discussed in this Legal Guide, to reduce liability risks.

## TAXES

Reducing FLW provides significant benefits to society by minimizing 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 recovery organizations 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 the reduction of FLW. For example, corporate donors may be more likely to donate surplus food to food recovery organizations if they receive a charitable deduction or credit to offset the cost of transportation and logistics. These tax incentives could help reduce the burden of the national income tax or other taxes levied on businesses. In Nigeria, the corporate income tax rate varies based on a company’s gross turnover. Companies with gross turnover of 100 million and above are taxed at 30%, companies with a gross turnover of less than 100 million but above 25 million are taxed at 20%, and companies with a gross turnover of 25 million or less are effectively exempt from income tax for the relevant accounting period.<sup>120</sup> However, Nigeria does not provide any tax incentives for in-kind food donations to food recovery organizations.

Under Nigeria’s Companies Income Tax Act (CITA), companies can deduct allowable donations made to eligible recipients in the relevant assessment period under certain conditions, but the limited nature of this deduction makes it inapplicable to donations made to food recovery organizations.<sup>121</sup> Tax-deductible donations must be made from the company’s profits for the relevant accounting period and cannot be expenditures of a capital nature (e.g., expenditures related to acquiring, upgrading, or maintaining buildings, equipment, and other

physical assets).<sup>122</sup> The deduction cannot exceed 10% of the company's total profits for the relevant accounting period.<sup>123</sup> Donations must be made to eligible recipients, including any public fund established or approved by the federal or state government, as well as Nigerian bodies and institutions, all of which are listed in CITA's fifth schedule.<sup>124</sup> Although a 2011 amendment to the fifth schedule expanded the list to include public institutions promoting human rights or social and economic development,<sup>125</sup> public institutions are defined as "institutions established by the government,"<sup>126</sup> and therefore independent food recovery organizations do not qualify as public institutions. Since food recovery organizations in Nigeria are established by individuals and not the government, they are not expressly listed in CITA's fifth schedule as entities eligible to receive tax deductible donations.

While deductions are available for allowable donations made to eligible recipients, CITA does not explicitly authorize in-kind food donations. If in-kind donations were allowable, it is unclear how the value of such nonmonetary donations would be calculated.<sup>127</sup> The fact that food recovery organizations are ineligible recipients under CITA as well as the uncertainty around in-kind donations means that no economic incentive directly supports food donation. For this reason, donors have no financial incentive to donate instead of discard food.

**THE FACT THAT FOOD RECOVERY ORGANIZATIONS ARE INELIGIBLE RECIPIENTS UNDER CITA AS WELL AS THE UNCERTAINTY AROUND IN-KIND DONATIONS MEANS THAT NO ECONOMIC INCENTIVE DIRECTLY SUPPORTS FOOD DONATION.**

## **BARRIERS**

While certain tax schemes may encourage food donations, they may also be potential deterrents. In many countries the value-added tax (VAT) in particular presents a financial barrier to donating food. As a general rule, VAT is levied on the final consumer of goods. It is levied on goods at each stage of the supply chain through a system of debits (an output VAT) and credits (an input VAT). The output VAT is the amount that a VAT-registered business or vendor will charge on its own sale of the good, whereas the input VAT is the amount invoiced to the vendor upon the good's purchase.

For most commercial transactions in Nigeria, the Value Added Tax Act requires vendors to incorporate VAT at a rate of 7.5% on the value of all taxable goods and services.<sup>128</sup> The value of goods is calculated as either the amount paid for the goods or the market value of the goods.<sup>129</sup> Nigeria's VAT system also has two categories of taxable goods with different tax treatment: exempt or zero rated. Both implicate the treatment of food products.<sup>130</sup> All taxable persons must register and file VAT monthly returns.<sup>131</sup>

When goods are exempt, VAT is not added to the selling price of the product.<sup>132</sup> Exempt goods and services in Nigeria are listed under the first schedule and include basic food items,<sup>133</sup> defined as "agro and aqua based" staple foods such as vegetables, fruit, milk, and meat products.<sup>134</sup> However, the exemption does not cover prepared perishable foods such as food sold and served by restaurants, hotels, eateries, lounges, contractors, caterers, or similar vendors and eateries.<sup>135</sup> In general, when food is VAT-exempt, the government does not tax the transfer of that food.<sup>136</sup> However, a food business cannot reclaim the input VAT it paid on business purchases along the value chain to produce it, placing a financial burden on food donors.<sup>137</sup> Typically, if a business pays VAT on the ingredients or inputs it purchases to make a product, it is reimbursed for those costs when it sells the product to consumers. However, for exempt items, if a food business pays VAT on the ingredients it acquires to produce a food product that is exempt, it cannot charge the VAT to the end consumer and cannot claim reimbursement from the government for the VAT paid on the inputs it acquired. This appears to be an issue for exempt food products that are sold and donated.

The second category is zero-rated goods, which generally refers to goods that are typically taxable but have a tax rate of zero in certain instances.<sup>138</sup> Under the Value Added Tax Act, goods purchased for use in humanitarian, donor-funded projects are zero-rated.<sup>139</sup> Humanitarian, donor-funded projects are defined as projects

“undertaken by non-governmental organizations and religious and social clubs or societies recognized by law whose activity is not for profit and in the public interest.”<sup>140</sup> Since food recovery organizations are mainly donor-funded and carry out activities in the public interest, food recovery and donation would presumably qualify as humanitarian, donor-funded projects. This means that foodstuff purchased by food donors and food recovery organizations solely for purposes of donation to charity may likely qualify for zero-rating under the VAT scheme. In addition, a business or individual is entitled to claim a refund on any input VAT paid throughout the supply chain for zero-rated goods.<sup>141</sup>

Nigeria’s VAT tax scheme does not pose a barrier to food donation, as basic food items are exempt and humanitarian, donor-funded projects are zero-rated.

## **DONATION REQUIREMENTS OR FOOD WASTE PENALTIES**

Some countries have created food donation requirements or impose monetary penalties for food that is sent to the landfill (often known as organic waste bans or waste taxes) to influence business behavior and promote sustainable food systems. Nigeria updated the National Policy on Solid Waste Management in 2020, identifying cafes, restaurants, hotels, food stalls, and agriculture and food-processing facilities as major sources of solid waste.<sup>142</sup> The policy urges the public to use organic waste to produce compost, but it does not establish donation requirements or food waste penalties.<sup>143</sup> At the time of this writing, Nigeria has not adopted a donation requirement or an organic waste ban relating exclusively to food waste.

## **GOVERNMENT GRANTS AND INCENTIVES**

Grants and incentive programs funded at the federal, state, or local level offer another important resource for food donation initiatives. This is particularly true in countries where donors consider tax incentives to be insufficient to offset the costs of donation or where a lack of infrastructure limits food recovery efforts. 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. At the time of this writing, Nigeria did not offer national, state, or local government grants for food donation.

# **CONCLUSION**

This Legal Guide identifies Nigeria’s current laws, policies, and programs that relate to FLW and food donation. While the national government is primarily responsible for guaranteeing food security and sustainable food systems, food recovery organizations acting in a private capacity and food manufacturers and retailers can provide an additional social safety net.

This Legal Guide provides a starting point from which policymakers, private-sector actors, and civil society may better understand the current laws and policies relevant to food donation. It also offers a foundation for dialogue about FLW prevention and the value of food recovery to Nigeria’s food security, economic stability, and environmental sustainability. A separate document produced under The Global Food Donation Policy Atlas project sets forth policy recommendations specific to Nigeria to contribute to this discussion. 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 Nigeria, donors, intermediaries, and policymakers should investigate the laws identified in this Legal Guide and seek additional legal counsel, if necessary.

# ENDNOTES

- 1 FOOD & AGRIC. ORG. OF THE U.N., GLOBAL FOOD LOSSES AND FOOD WASTE—EXTENT, CAUSES, AND PREVENTION 4 (2011), [https://www.fao.org/fileadmin/user\\_upload/sustainability/pdf/Global\\_Food\\_Losses\\_and\\_Food\\_Waste.pdf](https://www.fao.org/fileadmin/user_upload/sustainability/pdf/Global_Food_Losses_and_Food_Waste.pdf) (<https://perma.cc/RZV4-6G5C>).
- 2 *Id.*
- 3 FAO ET AL., THE STATE OF FOOD SECURITY & NUTRITION IN THE WORLD: TRANSFORMING FOOD SYSTEMS FOR FOOD SECURITY, IMPROVED NUTRITION AND AFFORDABLE HEALTHY DIETS FOR ALL 10, 125 (2021), <https://www.fao.org/3/cb4474en/cb4474en.pdf> [<https://perma.cc/N7CD-DUN6>].
- 4 Projections indicate that more than 840 million will be hungry by 2030 if current trends continue. See FAO ET AL., THE STATE OF FOOD SECURITY & NUTRITION IN THE WORLD: TRANSFORMING FOOD SYSTEMS FOR FOOD SECURITY, IMPROVED NUTRITION AND AFFORDABLE HEALTHY DIETS FOR ALL, 3 (2020), <https://www.fao.org/3/ca9692en/ca9692en.pdf>.
- 5 *Id.*
- 6 *Id.*
- 7 FAO, FOOD WASTAGE FOOTPRINT & CLIMATE CHANGE 1 (2015), <http://www.fao.org/3/a-bb144e.pdf> [<https://perma.cc/D34N-SNP4>].
- 8 *Id.*
- 9 G.A. Res. 70/1 at 22 (Oct. 21, 2015) (“By 2030, to halve per capita global food waste at the retail and consumer levels and reduce food losses along production and supply chains, including post-harvest losses.”).
- 10 The Global Food Donation Policy Atlas project would not be possible without the support of the Walmart Foundation. The Walmart Foundation is not responsible for the content of this document or the views contained herein. The content of this document should not be interpreted as legal advice; those seeking legal advice should speak to an attorney licensed to practice in the applicable jurisdiction and area of law.
- 11 *Nigeria Food Smart Country Diagnostic*, THE WORLD BANK 3, 7, 9 (2020), <https://openknowledge.worldbank.org/bitstream/handle/10986/34522/Nigeria-Food-Smart-Country-Diagnostic.pdf?sequence=1&isAllowed=y> (<https://perma.cc/8Q5T-HKER>).
- 12 FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD (2021) 146, <https://www.fao.org/3/cb4474en/cb4474en.pdf> (<https://perma.cc/J3GW-SVKR>).
- 13 FLPC would like to express its gratitude to Lagos Food Bank Initiative as well as many other NGOs, businesses, and government agencies that shared input with the FLPC team.
- 14 *GDP (current US\$)- Nigeria*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=NG> (<https://perma.cc/D7TA-RRDX>).
- 15 See THE WORLD BANK *supra* note 11 at 3.
- 16 Poverty & Equity Brief, Nigeria, THE WORLD BANK (2021), [https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2021/Global\\_POVEQ\\_NGA.pdf](https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2021/Global_POVEQ_NGA.pdf) (<https://perma.cc/JH7E-AWYK>).
- 17 FOOD & AGRIC. ORG. OF THE UNITED NATIONS, THE STATE OF FOOD SECURITY AND NUTRITION IN THE WORLD (2021) 146, <https://www.fao.org/3/cb4474en/cb4474en.pdf> (<https://perma.cc/J3GW-SVKR>).
- 18 *Nigeria*, GLOBAL FOODBANKING NETWORK, <https://perma.cc/9FNE-YGK8>; See THE WORLD BANK *supra* note 11 at 3, 11.
- 19 CONSTITUTION OF NIGERIA (1999), § 16(2)(d).
- 20 MINISTRY OF BUDGET AND NATIONAL PLANNING, NATIONAL PLAN OF ACTION ON FOOD AND NUTRITION IN NIGERIA (2016), [HTTP://EXTWPRLEGS1.FAO.ORG/DOCS/PDF/NIG184608.PDF](http://extwprlegs1.fao.org/docs/pdf/nig184608.pdf).
- 21 *Nigeria launches plan to end hunger by 2030*, INTERNATIONAL INSTITUTE OF TROPICAL AGRICULTURE, (Jan. 9, 2017), <https://www.iita.org/wp-content/uploads/2017/01/The-IITA-Bulletin-09-13-January-2017-No.-2361.pdf>; FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, AGRICULTURE SECTOR FOOD SECURITY AND NUTRITION STRATEGY 2016-2025, vi (2017), <http://extwprlegs1.fao.org/docs/pdf/nig201549.pdf> (<https://perma.cc/P9LY-AZWJ>).
- 22 AFRICAN UNION DEVELOPMENT AGENCY, THE CAADP RESULTS FRAMEWORK, II (2015), [https://au.int/sites/default/files/documents/31250-doc-the-caadp\\_results\\_framework\\_2015-2025\\_english\\_edited\\_1-1.pdf](https://au.int/sites/default/files/documents/31250-doc-the-caadp_results_framework_2015-2025_english_edited_1-1.pdf). (<https://perma.cc/2E46-HPWV>).
- 23 *The ECOWAS Zero Hunger Initiative Goes Live*, FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, (Feb. 26, 2014), <https://www.fao.org/right-to-food/news/news-detail/zh/c/1027006/> (<https://perma.cc/574W-F9K8>).
- 24 See AFRICAN UNION DEVELOPMENT AGENCY, *supra* note 22 at 2.
- 25 See FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, *supra* note 21 at x; UNITED NATIONS ENVIRONMENT PROGRAMME, FOOD WASTE INDEX REPORT (2021) 61, <https://www.unep.org/resources/report/unep-food-waste-index-report-2021> (<https://perma.cc/AB8A-3MCA>).
- 26 See UNITED NATIONS ENVIRONMENT PROGRAMME, *supra* note 25 at 61; *Nigerians Waste 40% of Agriculture Produce - Audu Ogbeh*, THE HERALD (2017), <https://www.herald.ng/nigerians-waste-40-of-agriculture-produce-audu-ogbeh/> (<https://perma.cc/4SM6-V9ZS>).
- 27 See THE WORLD BANK, *supra* note 11 at 21.
- 28 Nnaemeka C. Ikegwonu, *Addressing the crucial problem of food loss in Nigeria with solar-powered refrigeration*, INTERNATIONAL FOOD POL’Y RESEARCH INSTITUTE (2018), <https://www.ifpri.org/blog/coldhubs-addressing-crucial-problem-food-loss-nigeria-solar->

[powered-refrigeration](https://perma.cc/BRK5-2MMZ) (https://perma.cc/BRK5-2MMZ).

<sup>29</sup> See THE WORLD BANK, *supra* note 11 at 11.

<sup>30</sup> FED. REPUBLIC OF NIGERIA, NATIONAL POLICY ON SOLID WASTE MANAGEMENT (2020) 16, <https://environreview.com.ng/wp-content/uploads/2021/05/NATIONAL-POLICY-ON-SOLID-WASTE-MGT1.pdf>.

<sup>31</sup> *Id.* at 43.

<sup>32</sup> See *generally* Working Paper, Global Alliance for Improved Nutrition, Creating Alliances and Fostering Innovations to Reduce Post-Harvest Loss of Nutritious Food (Aug 2020), <https://www.gainhealth.org/sites/default/files/publications/documents/gain-working-paper-series-9-creating-alliances-and-fostering-innovations-to-reduce-post-harvest-loss-of-nutritious-food.pdf>. (https://perma.cc/4LCB-G7D4).

<sup>33</sup> *About Us*, LAGOS FOOD BANK INITIATIVE, <https://lagosfoodbank.org/about-us/> (https://perma.cc/4R88-4JBC).

<sup>34</sup> *Our Achievements*, LAGOSFOODBANK, <https://lagosfoodbank.org/about-us/our-achievements/>.

<sup>35</sup> *2020 Annual Report*, LAGOS FOOD BANK at 16 (2021), <https://perma.cc/BSY9-UAUF>.

<sup>36</sup> *TEFAP*, LAGOS FOOD BANK INITIATIVE, <https://lagosfoodbank.org/project/tefap/> (https://perma.cc/MLR7-J3FC).

<sup>37</sup> *TEFAP*, LAGOS FOOD BANK INITIATIVE, <https://lagosfoodbank.org/project/tefap/> (https://perma.cc/MLR7-J3FC).

<sup>38</sup> See CONSTITUTION, *supra* note 19 at § 1 (1).

<sup>39</sup> *Id.* at § 262 (1), 282.

<sup>40</sup> *Id.* at §§ 3 (6), 5 (1) - (2), 7(1), Schedule IV. Functions of Local Government Council 2 (b).

<sup>41</sup> *Id.* at § 140, 141, 147.

<sup>42</sup> *Id.* at § 5 (1) - (2).

<sup>43</sup> *Id.* at § 4(1), 47.

<sup>44</sup> *Id.* at § 2 (2), 3(1), 4 (2), Schedule II. Legislative Powers, Part I. Executive Legislative List

<sup>45</sup> *Id.* at § 4(6), 90, The 36 states are Abia, Adamawa, Akwa Ibom, Anambra, Bauchi, Bayelsa, Benue, Borno, Cross River, Delta, Ebonyi, Edo, Ekiti, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Katsina, Kebbi, Kogi, Kwara, Lagos, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau, Rivers, Sokoto, Taraba, Yobe, and Zamfara.

<sup>46</sup> *Id.* at § 4(7), 100 – 104, Part II. Concurrent Legislative List Extent of Federal and State Legislative Powers.

<sup>47</sup> *Id.* at Schedule II. Legislative Powers, Part I. Executive Legislative List; Part II. Concurrent Legislative List Extent of Federal and State Legislative Powers.

<sup>48</sup> *Id.* at § 3 (4) - (6), 7(1); COMMONWEALTH LOCAL GOVERNMENT FORUM, NIGERIA (2019), [http://www.clgf.org.uk/default/assets/File/Country\\_profiles/Nigeria.pdf](http://www.clgf.org.uk/default/assets/File/Country_profiles/Nigeria.pdf) (https://perma.cc/74GK-TTJC).

<sup>49</sup> *Id.* at § 7(3), Schedule IV. Functions of Local Government Council.

<sup>50</sup> *Background*, FEDERAL MINISTRY OF AGRICULTURE AND RURAL DEVELOPMENT, <https://fmard.gov.ng/who-we-are/>; *Food*, NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION, <https://www.nafdac.gov.ng/food/>.(https://perma.cc/4GNE-78WH)

<sup>51</sup> See CONSTITUTION, *supra* note 19 at § 16 (2) (d).

<sup>52</sup> *Id.* at Schedule IV. Functions of Local Government Council 2 (b).

<sup>53</sup> See *generally* National Agency for Food and Drug Administration and Control Act (2004) Cap. (N.1 LFN 2004).

<sup>54</sup> Food and Drugs Act (1999) Cap. (F32).

<sup>55</sup> See National Agency for Food and Drug Administration and Control Act, *supra* note 53.

<sup>56</sup> *Id.* at § 6.

<sup>57</sup> *Id.* at § 30.

<sup>58</sup> *Id.* at § 30.

<sup>59</sup> *Id.* at § 4 (1) (a), (5) (a).

<sup>60</sup> Pre-Packaged Food, Water and Ice Labelling Regulations (2019); National Agency for Food and Drug Administration and Control Act (2004) Cap. (N.1 LFN 2004) § 29.

<sup>61</sup> See *Food Guidelines*, NAFDAC, <https://www.nafdac.gov.ng/food/food-guidelines/>, (https://perma.cc/6S3Z-NP77).

<sup>62</sup> Food and Drugs (Amendment) Decree 1999 (March 23, 1999), <http://extwprlegs1.fao.org/docs/pdf/nig34264.pdf>.

<sup>63</sup> See Food and Drugs Act, *supra* note 54 at § 1(2), (3).

<sup>64</sup> *Id.* at § 21.

<sup>65</sup> *Id.* at § 1(1).

<sup>66</sup> *Id.* at § 4.

<sup>67</sup> *Id.* at § 10.

<sup>68</sup> *Id.* at § 16.

<sup>69</sup> See Food and Drugs (Amendment) Decree, *supra* note 62 at § 21.

<sup>70</sup> Federal Competition and Consumer Protection Act (2019) No. (1), § 131.

<sup>71</sup> Companies Income Tax Act (CITA), Cap C21, LFN 2004 (as amended) (Nigeria).

<sup>72</sup> Value Added Tax Act, No. 53 (1993) (Nigeria); FEDERAL INLAND REVENUE SERVICE, INFORMATION CIRCULAR NO: 2020/02, [https://pwnigeria.typepad.com/files/firs-vat-information-circular\\_may2020.pdf](https://pwnigeria.typepad.com/files/firs-vat-information-circular_may2020.pdf) (https://perma.cc/5QE5-Z4UL).

<sup>73</sup> See Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act (2004) Cap. C.34 LFN 2004 § 1.

<sup>74</sup> See CONSTITUTION, *supra* note 19 at § 4(7), 100 – 104.

<sup>75</sup> *Id.* at § 2 (2), 3(1) – (2).

<sup>76</sup> *Id.* at § 3 (4) - (6), 7(1); COMMONWEALTH LOCAL GOVERNMENT FORUM, NIGERIA (2019), [http://www.clgf.org.uk/default/assets/File/Country\\_profiles/Nigeria.pdf](http://www.clgf.org.uk/default/assets/File/Country_profiles/Nigeria.pdf) (<https://perma.cc/74GK-TTJC>).

<sup>77</sup> *Id.* at Schedule IV. Functions of Local Government Council 2 (b).

<sup>78</sup> Karu Local Government Council Foodstuff, Cattle/Domestic Animals Trade and Regulated Premises Adoptive Bye-Law (No. 12) 2018) § 13 (g) – (h).

<sup>79</sup> See National Agency for Food and Drug Administration and Control Act, *supra* note 53; see generally *Food*, NATIONAL AGENCY FOR FOOD AND DRUG ADMINISTRATION AND CONTROL, <https://www.nafdac.gov.ng/food/> (<https://perma.cc/Q53Z-98LF>).

<sup>80</sup> It is unclear whether the NGFHP document is an official “regulation,” given it falls under the Food Guidelines portion of NAFDAC’s website as opposed to the Food Regulations portion of the website. See *Food Regulations*, NAFDAC (last visited Nov. 13, 2021), <https://www.nafdac.gov.ng/food/food-regulations/> (<https://perma.cc/6S3Z-NP77>).

<sup>81</sup> NAFDAC, *NAFDAC Guidelines for Food Hygienic Practices*, FSAN-GDL-008-01 § 2.2.2 (2019), [https://www.nafdac.gov.ng/wp-content/uploads/Files/Resources/Guidelines/FOOD\\_GUIDELINES/Food-Hygienic-Practices-Guidelines-NGFHP-Updated.pdf](https://www.nafdac.gov.ng/wp-content/uploads/Files/Resources/Guidelines/FOOD_GUIDELINES/Food-Hygienic-Practices-Guidelines-NGFHP-Updated.pdf) (<https://perma.cc/L5E3-T69L>).

<sup>82</sup> See generally *Id.*

<sup>83</sup> *Id.* at § 8.

<sup>84</sup> See Food and Drugs Act, *supra* note 54 at § 1(1).

<sup>85</sup> *Id.* at § 1(2), (3).

<sup>86</sup> *Id.* at § 21.

<sup>87</sup> See Counterfeit and Fake Drugs and Unwholesome Processed Foods (Miscellaneous Provisions) Act, *supra* note 73 at § 1.

<sup>88</sup> *Id.* at § 12.

<sup>89</sup> *Id.*

<sup>90</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), [https://chlp.org/wp-content/uploads/2013/12/Dont-Waste-Donate - March-2017.pdf](https://chlp.org/wp-content/uploads/2013/12/Dont-Waste-Donate-March-2017.pdf) (<https://perma.cc/9VQD-BLHQ>).

<sup>91</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>.

<sup>92</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), [https://chlp.org/wp-content/uploads/2013/12/Dont-Waste-Donate - March-2017.pdf](https://chlp.org/wp-content/uploads/2013/12/Dont-Waste-Donate-March-2017.pdf) (<https://perma.cc/9VQD-BLHQ>).

<sup>93</sup> See Pre-Packaged Food, Water and Ice Labelling Regulations, *supra* note 60.

<sup>94</sup> See National Agency for Food and Drug Administration and Control Act, *supra* note 53 at § 29.

<sup>95</sup> See Pre-Packaged Food, Water and Ice Labelling Regulations, *supra* note 60 at

<sup>96</sup> *Id.* at § 1.

<sup>97</sup> *Id.* at § 11.

<sup>98</sup> *Id.* at § 11 (2)-(3).

<sup>99</sup> *Id.* at § 11 (2).

<sup>100</sup> FOOD & AGRIC. ORG. OF THE U.N., WORLD HEALTH ORG., CODEX GENERAL STANDARD FOR THE LABELLING OF PRE-PACKAGED FOODS, CODEX STAN 1-1985 (Rev. 1-1991) 2.

<sup>101</sup> See Pre-Packaged Food, Water and Ice Labelling Regulations, *supra* note 60 at

<sup>102</sup> *Id.* at § 11 (9) (a)-(f).

<sup>103</sup> *Id.* at § 2 (1)(b)(i).

<sup>104</sup> *Id.* at § 25.

<sup>105</sup> FOOD & AGRIC. ORG. OF THE U.N., WORLD HEALTH ORG., CODEX GENERAL STANDARD FOR THE LABELLING OF PRE-PACKAGED FOODS, CODEX STAN 1-1985 (Rev. 1-1991) 2.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> See Federal Competition and Consumer Protection Act, *supra* note 70.

<sup>110</sup> *Id.* at § 1 (a) – (e).

<sup>111</sup> *Id.* at § 131.

<sup>112</sup> *Id.* at § 136.

<sup>113</sup> *Id.* at § 167; *Id.* at § 136 (1), (4).

<sup>114</sup> *Id.* at § 167.

- <sup>115</sup> *Id.* at § 167.
- <sup>116</sup> *Id.* at § 136(3).
- <sup>117</sup> *Id.* at §§ 145.
- <sup>118</sup> *Id.* at §§ 136 (5), 129 (c) (i).
- <sup>119</sup> *Id.* at §§ 145.
- <sup>120</sup> See Companies Income Tax Act (CITA), *supra* note 71; see generally *Corporate - Taxes on Corporate Income*, PWC (2022), <https://taxsummaries.pwc.com/nigeria/corporate/taxes-on-corporate-income> [https://perma.cc/35FU-UHK6]
- <sup>121</sup> *Id.* at § 25 (Nigeria).
- <sup>122</sup> *Id.* at § 25 (2) (Nigeria).
- <sup>123</sup> *Id.* at § 25 (Nigeria).
- <sup>124</sup> *Id.* at § 25 (8)(a)-(b) (Nigeria); *Id.* at (Nigeria), Fifth Schedule (Funds, Bodies and Institutions in Nigeria to which Donations may be made under Section 25 of this Act).
- <sup>125</sup> See Amendment of the Fifth Schedule to the Companies Income Tax Act, Order No 1 of 2011 (Amendment) (Nigeria). Any public fund established or approved by the Government of the Federation or established by any of the State Governments in aid of or for the relief of drought or any other national disaster in any part of the Federation, A public institution established and maintained by a society or association for the promotion or defence of human rights, women empowerment and development or for re-orientation rehabilitation/welfare support service for orphans, widows, physically challenged, refugees and all the categories of persons that may require social or economic rehabilitation and transformation or for youth empowerment and development which is carried on other than for the purpose of profits or gains to the individual members of the society or association or person, A public institution established and maintained by a society or association for Leadership and Resource Development or for the Promotion of National Unity and Patriotism or for the Promotion of Social and Economic Development which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person, A public institution or public fund established and maintained by a society or association for accident prevention and control activities or for information system development and awareness which is carried on other than for the purpose of profits or gains to the individual members of the institution, society, association or person, A public institution established and maintained by a society or association for creation of awareness for transparency in governance and electoral processes or for the promotion of national unity and patriotism which is carried on other than for the purpose of profits or gains to the individual members of the society, association, or person, Any public institution or public fund established and maintained by a society or association for museum development and promotion of sports, arts and culture which is carried on otherwise than for the purpose of profits or gains to the individual members of the society, association or person, Any public institution or public fund established and maintained by a society or association for rendering assistance in the provision of safe water, electricity, infrastructure and agricultural development which is carried on other than for the purpose of profits or gains to the individual members of the society, association, or person, and Any professional body established under an Act of the National Assembly for the regulation and practice of the profession.)
- <sup>126</sup> S.I. 40 Requirements for Funds, Bodies or Institutions (Under the 5<sup>th</sup> Schedule to the Companies Income Tax Act) Regulations 2011, <https://gazettes.africa/archive/ng/2011/ng-government-gazette-dated-2011-12-16-no-116.pdf> (<https://perma.cc/9A7G-BK4R>) (“Public Funds, Bodies or Institutions’ means a Fund established by government or its Agencies for the purpose of advancing the interests and welfare of the people”); Amendment of the Fifth Schedule to the Companies Income Tax Act, Order No 1 of 2011 (Amendment) (Nigeria), <https://pwc-nigeria.typepad.com/files/cit-amendment---5th-schedule.pdf> (<https://perma.cc/PESL-ENVR>).
- <sup>127</sup> Michael Ango & Yetunde Filani, *Tax Deductibility of Donations by Corporate Entities and Individuals to Combat COVID-19*, ANDERSON TAX DIGEST (2020), <https://ng.andersen.com/tax-deductibility-of-donations-by-corporate-entities-and-individuals-to-combat-covid-19/> [https://perma.cc/3Y6Q-FXWC] (Another issue with COVID-19 tax deductibility is the treatment of donations made in kind. Would the monetary value of donations in kind such as... food items be computed and deducted to the maximum of 10% of the donor company’s total profits (where the donor is under the CITA regime)?).
- <sup>128</sup> See Value Added Tax Act, *supra* note 72 at ; FEDERAL INLAND REVENUE SERVICE, INFORMATION CIRCULAR NO: 2020/02, [https://pwc-nigeria.typepad.com/files/firs-vat-information-circular\\_may2020.pdf](https://pwc-nigeria.typepad.com/files/firs-vat-information-circular_may2020.pdf) (<https://perma.cc/5QE5-Z4UL>).
- <sup>129</sup> *Id.* at § 5.
- <sup>130</sup> Value Added Tax (“VAT”) Act (Modification Order), 2020 (“the Order”), <https://pwc-nigeria.typepad.com/files/vat-modification-order-2020-detailed-list-vat-exempts.pdf> [https://perma.cc/EAS7-VWAD]; Value Added Tax Act, First Schedule, (1993) (Nigeria); HARV. L. SCH. FOOD. L. POL’Y CLINIC, PROMOTING FOOD DONATION: TAX LAW AND POLICY 6, [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/REJ8-NA2W].
- <sup>131</sup> See Value Added Tax Act, *supra* note 72 at ; See FEDERAL INLAND REVENUE SERVICE, *supra* note 128; *Value Added Tax*, FEDERAL INLAND REVENUE SERVICE, <https://www.firs.gov.ng/value-added-tax-vat/> (https://perma.cc/J7T6-P6HA).
- <sup>132</sup> *Id.* at , First Schedule; *Id.* at First Schedule; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What are exempted goods under Value Added Tax (VAT) Act?”
- <sup>133</sup> See Value Added Tax Act, *supra* note 72 at First Schedule; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/>

[firs.gov.ng/value-added-tax-vat-faq/](https://www.firs.gov.ng/value-added-tax-vat-faq/) (<https://perma.cc/BTJ5-76JT>) See “What are exempted goods under Value Added Tax (VAT) Act?”

- <sup>134</sup> See Value Added Tax (“VAT”) Act (Modification Order), *supra* note 130 (additives (honey, whether raw or semiprocessed); white and brown bread; raw or semiprocessed cereals (maize, rice, wheat, millet, barley, sorghum, oat, fonino, etc.); natural and table water; fresh, dried, or ground vegetables (pepper, melons, lettuce, okro, cabbage, carrots, and “others of the same kind”) salt, raw, flaked, or floured roots (yam, cocoyam, water-yam, cassava, sweet potatoes, Irish potatoes, and “others of the same kind”); cooking oils (vegetable, soya, palm, groundnut, shea, beniseed, olive, coconut, and others “suitable for culinary purposes”); milk (fresh, liquid, and powdered); fresh or dried fruits; meat and poultry; culinary herbs; fish; flour and starch, pulses (beans, lentils, chickpeas, tamarind, and “others of the same kind”); and nuts).
- <sup>135</sup> *Id.*; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “Are Catering Services VATable?”
- <sup>136</sup> HARV. L. SCH. FOOD. L. POL’Y CLINIC, PROMOTING FOOD DONATION: TAX LAW AND POLICY 6, [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/REJ8-NA2W>].
- <sup>137</sup> See Value Added Tax Act, *supra* note 72 at ; *Id.* at 6; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What is input VAT?”
- <sup>138</sup> See Value Added Tax (“VAT”) Act (Modification Order), *supra* note 130; See Value Added Tax Act, *supra* note 72 at First Schedule; *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “What is Zero-rated VAT?”
- <sup>139</sup> FEDERAL INLAND REVENUE SERVICE, GUIDELINES ON THE TAX TREATMENT OF NON-GOVERNMENTAL ORGANIZATIONS (NGOs), INFORMATION CIRCULAR NO. 2021/01, <https://assets.kpmg/content/dam/kpmg/ng/pdf/tax/firs-circular-on-taxation-of-ngos.pdf> (<https://perma.cc/2LKW-SJHK>); *Value Added Tax (VAT) FAQ*, FED. INLAND REVENUE SERV., <https://www.firs.gov.ng/value-added-tax-vat-faq/> (<https://perma.cc/BTJ5-76JT>) See “Which transactions are zero-rated?”
- <sup>140</sup> See Value Added Tax Act, *supra* note 72 at Part III.
- <sup>141</sup> *Id.* at § 17; *FIRS Tax Refund Process Steps*, FED. INLAND REVENUE SERV., [HTTPS://WWW.FIRS.GOV.NG/TAX-REFUND/](https://www.firs.gov.ng/tax-refund/) (<https://perma.cc/96XT-P7Y5>).
- <sup>142</sup> See FED. REPUBLIC OF NIGERIA, *supra* note 30 at 16.
- <sup>143</sup> *Id.* at 43.

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