



# THE GLOBAL FOOD DONATION POLICY ATLAS

## Executive Summary: Ecuador

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

To help address the most pressing and universal legal and policy questions surrounding food recovery and donation, the **Harvard Law School Food Law and Policy Clinic (FLPC)** and **The Global FoodBanking Network (GFN)** have partnered to create The Global Food Donation Policy Atlas. This innovative partnership maps the laws and policies in countries across the globe. 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.

### ECUADOR FOOD LOSS AND WASTE

Each year, approximately 900,000 tons of food in Ecuador is either lost or wasted along the supply chain. Much of this food is still safe for human consumption and could be redirected to those experiencing hunger and chronic malnutrition throughout the country. The benefits of greater food recovery and donation are particularly apparent in Ecuador, as 32.7% of the population was moderately or severely food insecure between 2018 and 2020, an almost threefold increase from 2014 to 2016. Ecuador also has the second-highest level of chronic childhood malnutrition in Latin America, with 23% of children under 5 and roughly 27% of children under 2 suffering from it.

#### Ecuador: By the Numbers

- Population: 17.3 million
- GDP: \$98.81 billion
- Poverty Rate: 33%
- Prevalence of Food Insecurity: 33%
- Global Food Security Index: 61.8
- FLW Estimates: 900,000 tons/year

The government of Ecuador has prioritized hunger reduction and food security as part of its national policy agenda. In May 2022, Ecuador passed the Law to Prevent and Reduce Food Loss and Waste and Reduce the Hunger of People in Vulnerable Situations (*Ley Para Prevenir y Reducir la Pérdida y el Desperdicio de Alimentos y Mitigar el Hambre de las Personas en Situación de Vulnerabilidad Alimentaria*, hereinafter “FLW Law”). The FLW Law bans destroying food that is fit for human consumption and includes a hierarchy of alternative uses such as donating to a food bank, feeding animals, producing renewable energy, and composting. Prior to the FLW Law’s passage, various private-sector companies had already been donating food. As this new law goes into effect, many are looking for additional guidance and incentives to establish the infrastructure necessary to donate food.

## ECUADOR FOOD DONATION POLICY HIGHLIGHTS

**WASTE BAN:** Ecuador's FLW Law bans disposing food that is fit for human consumption and includes a hierarchy of alternative uses such as donating to a food bank, feeding animals, producing renewable energy, and composting. Anybody who disposes food fit for human consumption is subject to a fine.

**ACTION OPPORTUNITY:** The ban includes several alternative uses that would not reduce hunger (e.g., feeding animals or composting). Given the new FLW Law aims to reduce hunger, Ecuador should encourage actors throughout the food supply chain to donate food to food recovery organizations instead of using alternatives such as animal feed or composting. Incentivizing donations to food recovery organizations would both reduce food waste and decrease hunger.

**LIABILITY PROTECTION:** Ecuador's new FLW Law provides robust criminal and civil liability protection for food donors. It defines food donors as anyone who donates food that is fit for human consumption. These donors are protected from liability unless they act with gross negligence. The FLW Law directs the president of Ecuador to establish and implement general regulations in all aspects of the law, which may provide additional guidance for actors seeking liability protection.

**ACTION OPPORTUNITY:** 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. Ecuador should amend the FLW Law to provide liability protection to organizations that provide food for a nominal fee to help cover costs, which would encourage new and innovative models such as social supermarkets (nonprofit groceries) or other low-cost operations. In addition, the president should provide clear guidance to donors on the steps they should take to protect themselves from liability when donating food.

## ECUADOR FOOD DONATION POLICY OPPORTUNITIES

**FOOD SAFETY:** The new FLW Law requires all donated food to meet the baseline safety requirements of existing standards and protocols. It does not include any new, donation-specific requirements. The existing standards and protocols include all labeling requirements as well as all sanitary regulations. Food that is not fit for human consumption may not be donated, and food recovery organizations that receive donations must distribute them immediately to avoid decomposition.

**ACTION OPPORTUNITY:** To ensure that all donated food is safe, Ecuador should amend the FLW Law to create donation-specific requirements. Additionally, Ecuador's food safety agencies should publish donation-specific guidance. Both measures would help ensure that all donated food is safe for human consumption. They would also maximize the amount of food that is donated as donors would know exactly what steps to take to safely donate food.

**DATE LABELING:** Ecuador's date label requirements do not clarify which date labels relate to food safety and which refer to food quality. Most food products are required to have a "maximum consumption date" (*fecha máxima de consumo*) or "expiration date" (*fecha de vencimiento*), both of which relate to food quality. If the manufacturer chooses to include the maximum consumption date, it must also include the date of manufacture (*fecha de fabricación*) or date of production (*fecha de elaboración*). The FLW Law allows food to be donated past its expiration date.

**ACTION OPPORTUNITY:** Ecuador should amend its date labeling requirements to clearly differentiate between quality-based labels and safety-based labels. This dual date labeling regime would help consumers understand what food is still safe to eat and can be donated past the date as well as what food should be disposed of. Once these changes are enacted, Ecuador should promote

industry and consumer education programs to help everyone understand the differences between the two labels.

**TAX INCENTIVES:** Ecuador does not currently have any tax incentives to encourage food donation. The FLW Law directs Ecuador’s provincial governments to consider the issuance of tax incentives for donors, those that facilitate donations, and recipient organizations. Additionally, the FLW Law directs the president to determine the feasibility of tax incentives for donors.

**ACTION OPPORTUNITY:** Ecuador should consider implementing tax incentives, including tax deductions or credits, for donations to food recovery organizations and other intermediaries. Similarly, Ecuador should provide a tax deduction for the storage, transportation, and delivery of donated food. While the ban on disposing food fit for human consumption may encourage some food donations, it also allows for alternative uses such as renewable energy and compost. To incentivize potential donors to donate their food instead of sending it to another use, Ecuador should consider using tax deductions and credits. Prioritizing food donations with tax policy is likely to increase the amount of food that gets donated, thereby reducing food insecurity. For the value-added tax (VAT), Ecuador should also consider zero-rating all food donations for purposes of calculating the VAT.

## ECUADOR FOOD DONATION POLICY: HOW DOES IT COMPARE?

Ecuador’s recent adoption of a ban on destroying food fit for human consumption demonstrates momentum for policy change. While Ecuador implements this comprehensive, national framework, it should pursue additional, more targeted improvements to existing law and regulations that impact food donation. In particular, introducing a dual date labeling scheme, clarifying food safety requirements for food donations, and increasing tax benefits for donation may significantly increase food donations.

Food Safety for Donations	Date Labeling	Liability Protection for Food Donation	Tax Incentives	Tax Barriers	Donation Requirements or Food Waste Penalties	Government Grants and Incentives	National FLW/ Donation Law or Policy
No	Weak	Strong	No	Yes	Strong	No	Strong

For more detail on how Ecuador measures up against the other countries evaluated in The Global Food Donation Policy Atlas project, check out [www.atlas.foodbanking.org](http://www.atlas.foodbanking.org). For more information about the food donation legal framework in Ecuador and policy recommendations for strengthening this framework, check out the Ecuador Food Donation Legal Guide and the Ecuador Food Donation Policy Recommendations.

## BACKGROUND INFORMATION: MAJOR LEGAL ISSUES IMPACTING FOOD DONATION

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

**Date Labeling:** Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. Most food donors and food recovery organizations are appropriately cautious about donating food



that may no longer be safe, but it is not always clear whether the date label accompanied by language such as “sell by,” “expires on,” or “best by” relates to food safety. In fact, date labels are generally intended to reflect freshness or quality rather than safety for the vast majority of foods.

**Liability Protection for Food Donations:** 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. Some countries have adopted liability protections to mitigate this concern. However, many food donors and food recovery organizations are uncertain as to whether they are eligible for this protection, whether there are actions required to maintain the protection, and what limits, if any, apply.

**Tax Incentives and Barriers:** Transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food. Tax incentives, including deductions and credits, can help to offset these financial inputs and help make donation a more attractive, affordable option. The application of certain taxes to donated foods, such as the value-added tax, however, can also create a barrier to donation.

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

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

**National law or policy on food waste:** Adopting a national food loss and waste or food donation framework can help governments ensure policy coherence and advance food recovery efforts along the supply chain. Offering a unified and comprehensive framework may better enable governments to clarify food safety rules, standardize date labels, define liability protections for food donors and food recovery organizations, and set forth additional tax benefits to which donors may be entitled under relevant law. A national law or policy can also serve as a foundation for government grant programs and awareness campaigns focused on food system sustainability and food security.

## THE GLOBAL FOOD DONATION POLICY ATLAS PROJECT SUPPORT

**Project Partners:** The Global Food Donation Policy Atlas is a project of the Harvard Law School Food Law and Policy Clinic, with support from the Global FoodBanking Network.



### Support from the Walmart Foundation:

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

