THE GLOBAL
FOOD DONATION
POLICY ATLAS

CHILE
LEGAL GUIDE
FOOD DONATION LAW AND POLICY

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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 in order 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 Harvard Law School Food Law and Policy Clinic and The Global FoodBanking Network. To learn about and compare the food donation laws and policies for the countries FLPC has researched to date, visit atlas.foodbanking.org.

About 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/FLPC.

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About The Global FoodBanking Network

GFN is an international non-profit organization that nourishes the world's hungry through uniting and advancing food banks in more than 40 countries. GFN focuses on combating hunger and preventing food waste by providing expertise, directing resources, sharing knowledge and developing connections that increase efficiency, ensure food safety, and help food banks reach more people facing hunger. For more information visit www.foodbanking.org.

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INTRODUCTION

Purpose of This Guide

Food loss and waste 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;[1] this amounts to approximately 1.3 billion tons of food each year that end up in the landfill.[2] Food loss or waste occurs at every stage of the food system: during the initial harvest due to low market prices, because of high labor costs and demand for perfect-looking produce; by grocery stores and restaurants overestimating customer demands; and by consumers who engage in inefficient shopping and cooking practices and lack a clear understanding about date labels.[3]

These behaviors have significant environmental, economic, and social consequences: food that is ultimately lost or wasted has a huge carbon footprint of 3.3 gigatons,[4] using roughly 28% of agricultural land[5] and accounting for 8%, or 70 billion tons, of total global greenhouse gas emissions.[6] Collectively, this damage costs approximately $940 billion per year.[7] Meanwhile, more than 820 million people are undernourished and one in nine is food insecure.[8] The international community has sought to address this paradox and mobilize the reduction of food waste, especially within the framework of the *2030 Agenda for Sustainable Development* and Sustainable Development Goal 12.3.[9]

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, food loss, and food waste continue to rise, new, 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.[10] This innovative partnership maps the laws and policies affecting donations in 15 countries over the course of two years. The project aims to identify and explain national laws relating to food donation, analyze the most common legal barriers to promoting greater food donation, and share best practices and recommendations for overcoming these barriers.

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 Chile, where estimates suggest that more than half of the food produced in the country is lost or wasted each year,[11] while 13.6% of the population was suffering from food insecurity prior to the novel coronavirus (COVID-19) pandemic.[12] FLPC and GFN, in collaboration with partners in Chile,[13] 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.[14] This Legal Guide also serves as a resource for those in other countries who are looking to inform their own food donation laws and policies.

After providing initial commentary on food loss and recovery in Chile, 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, and waste diversion laws that penalize food waste or require recovery. The extent to which Chile has developed and subsequently implemented these legal frameworks compared to other countries may vary.

State of Food Insecurity, Food Loss, Waste, and Recovery in Chile

Policies to prevent food loss and waste and promote food donation gain new importance when a country's socioeconomic conditions perpetuate food insecurity, especially among the most vulnerable. This is the case in Chile, which, despite possessing one of the most diverse and fastest growing agricultural markets in Latin America,[15] has one of the highest rates of inequality among Organisation for Economic Cooperation and Development (OECD) member countries.[16] According to the National Statistics Institute, half of Chilean workers earn less than $550 per month, with the top income bracket earning 13.6 times more than the lowest.[17] This inequality inspired months of violent protests starting in 2019,[18] and which continued after the emergence of the novel coronavirus (COVID-19) pandemic. This crisis has further highlighted the disparate access to health care and social safety nets.[19]

WHILE THE FULL EXTENT OF THE PANDEMIC'S IMPACT ON FOOD INSECURITY AND HUNGER IN CHILE IS STILL UNKNOWN, IT HAS LIKELY EXACERBATED THE SERIOUS NUTRITION AND DIETARY CHALLENGES ALREADY IMPACTING THE CHILEAN POPULATION, ESPECIALLY THE LOWEST SOCIOECONOMIC GROUPS.

While the full extent of the pandemic's impact on food insecurity and hunger in Chile is still unknown, it has likely exacerbated the serious nutrition and dietary challenges already impacting the Chilean population, especially the lowest socioeconomic groups.[20] Even before the pandemic, hunger and food insecurity were on the rise, with the prevalence of undernourishment increasing from 3.1% in 2014-16 to 3.5% in 2017-19 and the prevalence of moderate or severe food insecurity increasing from 10.2% to 15.6% of households with children and adolescents during those same periods.[21]

At the same time, overweight and obesity is of increasing concern among Chileans.[22] According to a National Health Survey conducted by the Ministry of Health, the percentage of individuals over the age of 15 who are overweight, obese, or morbidly obese increased from 64.4% in 2009-10 to 74.2% in 2016-17.[23] The obesity rate among women in Chile is the highest in South America, at 32.8%.[24] Elderly populations, children, and individuals with fewer than eight years of education have also been found to exhibit higher rates of obesity and are thus more likely to develop noncommunicable diseases such as heart disease, type 2 diabetes, hypertension, and some types of cancers.[25] These trends are closely associated with scarcity of resources, which limits access to nutritionally diverse, quality food, and to increased availability and consumption of ultraprocessed foods—following patterns seen elsewhere in Latin America.[26]

Chile by the numbers

Population **18,058,000**	Prevalence of food insecurity **13.6%**	World Bank classification **High income**
Median age **34.8 years**	Global Food Security Index **75.5**	Human Development Index **0.843**
GDP **$298.2 billion**	GINI Index **46.60**	FLW estimates **Unknown**
Poverty rate **8.6%**	Food Security Index **75.1**	

Source: The Global FoodBanking Network, 2020.

In recent years, Chile has emerged as a global leader in adopting legislative responses to this nutrition crisis, requiring greater transparency in labeling and prohibiting the marketing of foods high in added sugars, salt, calories, and fat to children.[27] Unfortunately, these efforts are not matched with respect to food loss and waste. Chile lacks official statistics on the amount of food lost or wasted each year,[28] but preliminary estimates confirm the severity of this issue. For example, an estimated 20% of lettuce and nearly 60,000 tons of potatoes are lost at the harvesting stage;[29] 280 tons of imported rice are lost during storage; 300,000 tons of bread are wasted; and over 50% of hake fish caught is lost before it reaches consumers.[30] Industrial fruit and vegetable processors also produce an average of 4.6 million tons of solid waste, 75% of which goes to compost, ends up in landfills, or is used for energy production. The remaining 25% is used for animal feed.[31]

Such high rates of food loss and waste pose an obstacle to achieving Chile's goal of greater nutrition and food security for the general population. Combatting hunger and promoting better health outcomes require more than bans and limits on unhealthy food; they also require ensuring greater affordability and availability of nutritious food. Discarding safe, surplus, and nutritious food in landfills rather than redirecting it to those who need it most is therefore contrary to Chile's legislative agenda and the needs of the most vulnerable populations.

While the national government has not adopted any law that would facilitate or require such food recovery and donation, it has promoted inclusive, multistakeholder solutions to tackle food loss and waste.[32] In 2014 the Ministry of the Environment (*Ministerio de Medio Ambiente* or MMA) created the Interministerial Committee on Sustainable Consumption and Production (*Comité Interministerial de Consumo y Producción Sustenables*), tasked with designing the National Program for Sustainable Consumption and Production and committing to a 17% reduction in food loss and waste by 2022.[33] Three years later, the government established the National Committee for the Prevention and Reduction of Food Loss and Waste (*Comité Nacional para la Prevención de Pérdidas y Desperdicios de Alimentos de Chile*) to lead the national initiative.[34] The National Committee is responsible for developing a normative legal framework relevant to food loss and waste; researching and quantifying food loss; raising consumer awareness; and promoting research, knowledge, and innovation to reduce food loss and waste.[35]

THE NATIONAL COMMITTEE IS RESPONSIBLE FOR DEVELOPING A NORMATIVE LEGAL FRAMEWORK RELEVANT TO FOOD LOSS AND WASTE; RESEARCHING AND QUANTIFYING FOOD LOSS; RAISING CONSUMER AWARENESS; AND PROMOTING RESEARCH, KNOWLEDGE, AND INNOVATION TO REDUCE FOOD LOSS AND WASTE.

The National Committee has not yet developed such a framework, but it has been active in recent years. In 2018, in coordination with the Ministry of Agriculture (*Ministerio de Agricultura* or MINAGRI), it developed a manual to help public- and private-sector actors avoid and reduce food loss and waste.[36] In 2019 the National Committee divided participating members into three working groups to develop an Action Plan to achieve its overall objective of reducing food loss and waste.[37] The National Committee also supported efforts to develop a more accurate methodology to quantify food loss and waste along the supply chain.[38] That same year, the Chilean government teamed up with the Food and Agriculture Organization of the United Nations (FAO) to launch a "Save the Food" campaign, encouraging consumers to engage in more responsible purchasing and food preparation practices.[39] In 2020 MINAGRI began working to transform the National Committee into a National Commission, which would have a more permanent status and access to ministerial resources.[40]

As these government-sponsored programs focused on food loss and waste continue to develop, actors from public and private sectors nationwide are also collaborating to promote food rescue and recovery. Since opening its first of two food banks in 2010, the Chilean Food Banking Network (*Red de Alimentos* or La Red) has rescued 43 million kilograms of food and basic necessities and prevented the release of 98,038 tons of greenhouse gases that would have been emitted if the food had been sent to landfills.[41] In 2020 alone La Red served more than 258,771 beneficiaries across its 438 member organizations around the country.[42] Walmart Chile and other

corporate food industry actors have partnered with La Red to secure direct donations of food that is no longer marketable but still safe for consumption.[43]

As previously noted, the Chilean government has not yet adopted a national law specific to food recovery or food donation. However, Chile's existing legal framework does contain laws and regulations that impact ongoing food donation efforts. The remaining sections of this Legal Guide provide an overview of these laws and address the issues most likely to arise for food donors, food recovery organizations, policymakers, and other interested stakeholders.

OVERVIEW OF CHILE'S RELEVANT LEGAL FRAMEWORK

The Constitution of Chile established a national system of government under which powers are distributed between the central national government and provincial governments.[44] At the national level, power is allocated across the executive branch, the judicial branch, and a bicameral legislative branch.[45] The Federal Constitution of 1980 and its several amendments are the primary source of civil law. They give the legislative branch authority to enact national laws or statutes, which include an internal hierarchy of institutional acts (*ley orgánica constitucionales*), special acts (*ley de quorum calificado*), and ordinary acts (*ley ordinaria*) (e.g., decree law (*decreto ley*), delegated law (*decreto con fuerza de ley*), or ordinary/common law (*ley ordinaria*)).[46] Within the framework of these laws, the executive branch may issue regulations (*reglamentos*), plain decrees (*decretos*) and resolutions (*resolución*), supreme decrees (*decreto supremo*), and other administrative acts.[47]

Currently, no national laws, regulations, acts, or decrees specifically address food recovery or donation. As explained above, however, the National Committee for the Prevention and Reduction of Food Losses and Waste has been tasked with creating a legal framework consistent with its overarching objective of reducing food losses and waste. In the meantime, a handful of national laws may provide direction for food donors and food recovery organizations seeking to safely donate food. Chilean municipalities may also take action to support national initiatives in this space, even though legal authority is highly concentrated at the national level.[48] The sections below highlight the most relevant frameworks for food recovery and donation.

Sanitary Code and Food Sanitary Regulations

Chile's Sanitary Code (*La Código Sanitario*)[49] and its comprehensive Food Sanitary Regulations (*Reglamento Sanitario de los Alimentos* or RSA) constitute the general legal framework for food in Chile.[50] The Sanitary Code was promulgated in 1967 and published in 1968 to govern all matters related to the promotion, protection, and rehabilitation of public health.[51] The Sanitary Code does not offer substantive safety standards for food products, but Title II, which concerns the regulation of food and "food products," requires the creation of food safety standards as well as regulations setting forth the conditions that must be met to produce, import, process, package, label, distribute, and sell food.[52]

Such regulations are featured in the comprehensive RSA, which was adopted in 1996, pursuant to the Sanitary Code. The RSA comprises 21 chapters, which cover topics from food safety to labeling to packaging as well as regulations for specific food categories.[53] The regulations are frequently updated by the Ministry of Health (*Ministerio de Salud* or MINSAL), which is responsible for overseeing compliance with and enforcement of the provisions of the RSA through its Health Services division (*Servicios de Salud*) and through Regional Health Ministries (*Secretarías Regionales Ministeriales de Salud* or SEREMIS).[54]

Like many countries in Latin America, Chile has sought to standardize its national sanitary and food labeling regulations with those prescribed under the *Codex Alimentarius*.[55] The Chilean Agency for Food Quality and Safety (*La Agencia Chilena para la Calidad e Inocuidad Alimentaria* or ACHIPIA), a Presidential Advisory

Commission under MINAGRI, oversees this harmonization process across government agencies and the private sector.[56] As discussed later in this Legal Guide, however, Chile has not fully adhered to the *Codex Alimentarius*' recommended date labeling scheme, which is intended to ensure that food labels effectively distinguish between dates used to indicate safety and those used to indicate peak quality.

Other Relevant National Law

While the Sanitary Code and the RSA are the most relevant frameworks for food donation, food donors and food recovery organizations should be aware of other national laws that may impact donation. In 2016, for example, the national government established a legal framework for waste management, the promotion of recycling, and the extension of producer responsibility (*Ley de Responsiblidad Extendida del Productor* or REP Law) through the passage of Law No. 20.920.[57] The purpose of the REP Law is to reduce waste generation and promote its reuse, recycling, and recovery by imposing responsibility on producers of waste to protect public and environmental health.[58] The REP Law does not explicitly address food waste, and MMA has not extended the REP Law's application to include food recovery and donation. As discussed in the companion Chile Food Donation Policy Recommendations, however, this legal framework may provide opportunities for promoting greater food donation in the future.

As discussed later in this Legal Guide, other relevant laws include the Consumer Protection Act (*Ley de Protección al Consumidor* or CPA), which offers insight into the potential liability scheme that may apply in the event that a beneficiary becomes harmed from donated food;[59] the Income Tax Law (*Ley sobre Impuesto a la Renta*), which provides tax incentives for eligible food donors (as explained in regularly published "Circulars");[60] and the Value-Added Tax Law (*Decreto Ley nº 825, Sobre Impuesto a las Ventas y Servicios*), which removes a potential tax barrier to donating safe, surplus food.[61] At the time of this writing, legislation to require donation or prohibit food waste was pending before Congress and would impact food donation efforts if adopted.[62] Finally, Chile's progressive legislation that requires food labeling and restricts the marketing and sale of unhealthy foods may be relevant to food donation efforts, even though the laws do not explicitly address donated food.[63]

Provincial and Municipal Law

While the regulatory framework most relevant to food donation is primarily constructed at the national level, nonnational government agencies are delegated authority within Chile's 16 regions, or provinces, and 345 municipalities.[64] The institutional mission of the regional governments is to represent the president of Chile in the implementation of public policies and to oversee and promote the region's economic, social, and cultural development. This is generally achieved by formulating and executing the budget for regional investment.[65] While regulatory authority over food production, safety, and sale is generally exercised at the national level, regional and municipal ministries may promote food loss and waste prevention and food recovery consistent with any national effort. At the time of this writing, Chile's provinces and localities had not introduced robust food donation policies.

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. All donated food should be safe for consumption and

comply with applicable food safety laws and regulations. Potential donors, however, are often uncertain about which food safety regulations apply to donated food as opposed to purchased food and about the steps necessary to safely donate food in compliance with applicable regulations. As a result, safe, surplus food that could have been redirected to populations in need is instead destined for landfills.

As explained above, Chile's food safety requirements are predominantly contained in the RSA, a compilation of regulations that are silent on the specific issue of food donation. The RSA sets a baseline food safety standard, requiring those subject to the Regulations to ensure that food is not contaminated, adulterated, or otherwise unfit for human consumption.[66] The RSA broadly applies to all persons and legal entities involved in the manufacture, import, sale, distribution, or transfer of food for human consumption.[67] This broad scope of application impliedly includes food donors and food recovery organizations involved in the aforementioned activities; however, the RSA does not explicitly reference food donation.

Without distinct provisions dedicated to food donation or an explicit reference to food donation through the RSA, food donors and food recovery organizations may reasonably presume that all provisions apply to donated food. Such an interpretation may prove difficult in practice, as the RSA includes restrictions that do not directly relate to food safety within the scope of the donation process. For example, the Regulations include standards of identity for certain food products and labeling requirements to which manufacturers must adhere to offer the product for sale.[68] The RSA does not designate these provisions as "nonsafety" or recognize that such rules may not be relevant for food donation operations. Indeed, sometimes food is donated precisely because labeling flaws render it unsuitable for sale, even though it is still safe to consume.

While there are no clear food safety regulations for food donation, there are articles that reference the "free" delivery or distribution of food products. This includes Article 110-bis, which states that foods containing calories, sodium, sugar, or saturated fat in amounts exceeding the thresholds established in Article 120-bis of the RSA may not be offered or delivered for free to children under 14;[69] Article 497-bis also prohibits the free delivery of infant formula to children under 12 months.[70] Food donors and food recovery organizations may reasonably interpret these provisions as prohibiting the donation of certain foods. However, neither the RSA nor MINSAL have commented on this interpretation.

As a result, food donors and recovery organizations should carefully consider the RSA in its entirety and ensure that no relevant provisions are violated. In the case of violations, the Public Health Institute (*Instituto de Salud Pública de Chile* or ISP) under MINSAL has the discretion to impose sanctions in accordance with Book X of the Sanitary Code.[71]

Date Labeling

Date labels affixed to food products are a major driver of food waste and an obstacle to food donation. As explained in the previous section, most food donors and food banks are appropriately cautious about donating food that meets safety standards, but it is not always clear which standards relate to food safety. And, while fresh products like fruits and vegetables will appear visibly spoiled when they are no longer safe to consume, it can be more difficult to gauge when this is the case for packaged foods. Many donors interpret date labels affixed to such food products as indicators of safety and will therefore throw away food once the date has passed; intermediaries may refuse to accept donated food after this date, deeming the food product unfit for human consumption.

Despite this interpretation, for the vast majority of foods, date labels indicate freshness or quality rather than food safety. Manufacturers use a variety of quality-based methods to determine the timeframe for label dates, all of which are intended to reflect when the food will be at its "peak quality."[72] 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.[73] Similarly, 84% of Americans report that they throw away food after

the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.[74]

There remains some uncertainty surrounding the appropriate meaning and application of date labels in Chile, which is standardized under the RSA. Consistent with the *Codex Alimentarius*,[75] the RSA introduces two labels: an "expiration date" ("*fecha de vencimiento*")[76] and a "minimum duration date" ("*fecha de duración minimo*").[77] The RSA's definitions for these labels, however, do not clearly align with the 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods. The *Codex Alimentarius* clearly defines the "expiration date" as a safety-based label, or the last date on which the product should be sold or consumed "due to *safety and* quality reasons."[78] The RSA, however, does not clarify that food is no longer safe for consumption after the "expiration date" has passed. Instead, the RSA refers to the "expiration date" as the date or period after which the manufacturer cannot guarantee that a product, having been stored under certain conditions, will retain its expected attributes.[79] This definition allows for manufacturers to ultimately choose an "expiration date" that reflects peak quality rather than safety.

The RSA also does not require manufacturers to choose between these safety-based and quality-based dates for each food item. The *Codex Alimentarius* advises manufacturers to affix *either* a safety-based or quality-based label depending on which one is more appropriate. The RSA, however, indiscriminately requires manufacturers to affix an "expiration date" to all packaged foods.[80] For foods that are unlikely to pose an increased risk to health overtime, this means that manufacturers may affix an "expiration date" for an "indefinite duration" rather than for a specific day, month, and year.[81] Chile permits manufacturers to include the quality-based "minimum duration date," expressed as "preferably consume before," on food items that feature an "expiration date."[82] The use of both labels is contrary to the *Codex Alimentarius*' dual date labeling scheme, which advises manufacturers to pick either a quality-based or safety-based label, but not to use both.

Finally, Chile's existing legal framework does not clearly explain the application of these dates in the context of food donation. The RSA is silent on whether food may be safe to donate after the affixed date, addressing only whether food may be sold after the affixed date.[83] Consistent with the *Codex Alimentarius*, the RSA prohibits the sale of food after the "expiration date." However, the RSA also bans the sale of food after the "minimum duration date," contrary to the *Codex Alimentarius*' guidance, which recognizes that food may be "fully marketable" after the quality-based date. Again, the RSA does not confirm whether food donors may still donate "unmarketable food" that is still safe for consumption.

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 the 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 injury). 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.

National law in Chile does not provide comprehensive legal protections for food donors and food recovery organizations or specifically address liability imposed on these actors. However, under existing frameworks, food donors and food recovery organizations are unlikely to face liability in the event that a beneficiary alleges harm arising from donated food. In the event of such a claim, Chilean courts may consider the actions of food donors and food recovery organizations pursuant to the CPA.[84] The CPA is regulated by the National Consumer Service (*Servicio Nacional del Consumidor* or SERNAC) and governs the "supplier-consumer" relationship, generally.[85] The CPA explains that a negligent "supplier" of a good or service that causes impairment to the "consumer" due to failures or deficiencies in the quality, identity, substance, or security of the respective good or service may be held liable for the resulting harm.[86]

In principle, this standard could be used to find a negligent food donor or food recovery organization liable; in practice, however, such actors are unlikely to face liability under the CPA. This is because the CPA defines "suppliers" as natural or legal persons, public or private, who *regularly* charge a consumer for goods or services (emphasis added).[87] Since food donors and food recovery organizations usually deliver donated food *free of charge*, they would not qualify as "suppliers" under the CPA. As a result, food donors and food recovery organizations would not be held liable for harm to beneficiaries, even if the harm resulted from a donor's or intermediary's negligence in handling the donated food.

Even if food donors and food recovery organizations qualify as "suppliers" under the CPA, they may still be able to avoid liability under the CPA's defenses. Article 47 of the CPA explains that producers, importers, and distributors are liable for products that are dangerous or contain levels of toxicity that are considered harmful to health or safety;[88] however, such actors are exempt from responsibility if they comply with applicable law and other prevention measures.[89] Food donors and food recovery organizations that adhere to the RSA, for example, may be able to avoid liability. Thus, while no specific liability protection exists for food donation, this broad defense and the limited scope of the negligence-based "supplier-consumer" relationship should offer some peace of mind to donors about the potential risks of liability stemming from food donation.

Taxes

Reducing food loss and waste results in sizable economic benefits to society, as it minimizes the costs associated with producing and discarding food that is never consumed. Food donation also helps mitigate the costs of hunger and stimulates the economy: food banks and intermediaries provide jobs or sponsor community development, while recipients of donated food are able to spend limited financial resources on other basic goods and services. But food donation can also 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 rather than donate it. Some countries are addressing this issue by offering tax incentives and removing financial barriers to food donation.

Incentives

Tax incentives can significantly support food donation and help reduce food loss and waste. For example, corporate donors may be more likely to donate surplus food 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 Chile, for example, business entities that generate income must pay a first category tax, or corporate tax at a rate of 27%.[90] This tax may be credited against the personal progressive tax (for persons domiciled or residing in Chile) or the additional tax (for Chilean-derived income by persons not domiciled or residing in Chile), levied on individuals or entities.[91]

Chile's tax regime currently offers several benefits that may help offset the costs of donation and reward donors that support nonprofit organizations engaged in food recovery.[92] Law 19.885 (*Ley de Donaciones Sociales* or Law of Social Donations), for example, allows businesses and individual donors to claim a tax credit for up to 50% of monetary donations[93] made to registered nonprofit organizations, including those devoted to hunger and poverty alleviation.[94] Business donors may also deduct the remaining 50% of the monetary donation from their taxable income.[95] These benefits are subject to certain limits and cannot exceed 5% of the donor's taxable net income (i.e., total amount of income on which the business can be taxed) or 0.16% of the donor's net worth.[96] In 2020 Chile's Internal Revenue Service (*Servicio de Impuestos Internos* or SII) temporarily suspended these limits to further incentivize donations during the COVID-19 pandemic.[97]

Chile's Income Tax Law also provides an incentive for companies engaged in manufacturing, importing, or selling food to donate safe, surplus food.[98] As explained in the SII's Circular 54 published in 2009, Article 31 of the Income Tax Law has long permitted such companies to deduct the total value of food donated to nonprofit

entities that deliver the food free or charge to those in need.[99] To claim this benefit, companies must establish: (1) that the donated food has lost its commercial value to the company due, for example, to poor, damaged, or defective packaging, bad labeling, or the proximity of the expiration date; and (2) that the company has donated the food (a) free of charge (b) either directly or through an intermediary nonprofit institution (c) to another nonprofit institution that distributes the food (d) to people with limited resources.[100] Such institutions include those that are registered with the SII's "Special Registry of Nonprofit Organizations Donating or Receiving Unmarketable Products" ("*Registro de Instituciones sin Fines de Lucro Distribuidoras y/o Receptoras de Productos cuya Comercialización se ha Vuelto Inviable*").[101]

Despite the provision of this benefit, few businesses have historically perceived food donation as an economical alternative to discarding safe, surplus food. This is because prior to the 2020 tax reform, the Income Tax Law also permitted taxpayers to deduct expenses associated with throwing away food that had lost commercial value.[102] As a result, food businesses could receive the same or similar deduction for throwing away the food.[103] The Chilean government nevertheless has sought to promote donation. For example, in December 2018, the SII published Circular 60, which reiterated the tax benefits available for food donation consistent with Circular 54 and explained the steps for claiming the available tax deduction.[104]

As part of its comprehensive tax reform completed in 2020, the Chilean government has taken action to better ensure that the Income Tax Law incentivizes food donation and deters unnecessary food waste. Consistent with efforts to reduce waste and promote greater supply chain sustainability,[105] the Chilean government adopted Law 21.210, which amended Article 31 of the Income Tax Law, among other provisions.[106] Article 31 now states that voluntarily destroying food that is unmarketable but still suitable for human consumption and that could have been delivered free of charge does not constitute a deductible expense.[107] Moreover, food that is voluntarily and unnecessarily destroyed will be subject to a single tax of 40% that is applied to the taxpayers' income.[108] Businesses may still claim a deduction for the destruction of food that has lost commercial value due to a defect, expiration, or substantial market changes.[109]

The Chilean government has acknowledged that the purpose of this amendment was to create a disincentive for destroying goods that are necessary for social assistance.[110] Nonprofit organizations that provide such social safety nets, such as La Red, have expressed support for this reform,[111] which is further explained in Circular 53.[112] Published in August 2020, Circular 53 reiterates that taxpayers may claim a deduction for the value of food that has lost commercial value and is donated free of charge to nonprofit organizations that distribute the donated food to those with limited resources or in vulnerable situations.[113] The Circular further clarifies that taxpayers may still claim losses on food that is not suitable to donate, such as expired dairy and meat products that are not safe for human consumption.[114]

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. The VAT is levied on goods at each stage of the supply chain, often through a system of debits (an output VAT) and credits (an input VAT). The VAT debit is the amount that a VAT-registered business will charge on its own sale of the good, whereas the VAT credit is the amount invoiced to the VAT-registered business upon the good's purchase. For most transactions in Chile, including the sale of food, a standard VAT rate of 19% is applied through this system of credits and debits.[115]

Many countries have designated food donation as a nontaxable event, meaning that donation-receiving entities do not have to pay a VAT debit on donated foods. This VAT exemption benefits donation-receiving entities but shifts the financial burden onto food donors that are often unable to reclaim the VAT credit on the donated food as they normally would at the point of sale. As a result, donors are left with a technical balance in favor (a VAT credit that exceeds the VAT debit) that may accumulate to a substantial amount. Thus, for many donors, being unable to reclaim the VAT credit feels like a penalty for donating the surplus food—particularly if the country

otherwise permits donors to reclaim the VAT for "business losses" such as unmarketable food that is thrown away.

The Chilean government has adjusted the VAT Law (*Ley Sobre Impuesto a Las Ventas y Servicios*) to ensure that donors can recover the VAT credit on donated food and thus remove the VAT as a potential barrier to donation. Article 8 of the VAT Law expressly permits taxpayers to claim the tax credit on free donations of goods described under Article 31 of the Income Tax Law.[116] As noted above, Article 31 describes business losses that are eligible for tax deductions and specifically mentions unmarketable food that is still suitable for human consumption. Accordingly, businesses that donate safe, surplus food free of charge may still recoup the VAT credit that they would otherwise recover through the sale of the food, if it was still commercially viable.

Donation Requirements or Food Waste Penalties

Some countries have introduced food donation requirements or imposed monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes) to influence business behavior and promote more sustainable food systems. As previously discussed, Chile's 2020 tax reform to the Income Tax Law clarified that taxpayers may not claim food that is unnecessarily wasted as a deductible expense, but instead have to pay a tax penalty on that waste.[117] While the SII sought to address this penalty through Circular 53,[118] experts in Chile agree that the parameters of this penalty warrant further clarification.[119]

Efforts to develop legislation that specifically requires donation or prohibits food waste have gained momentum in the past few years. At the time of this writing, a bill introduced in 2015 proposing to regulate the distribution of food suitable for human consumption was under consideration by the Health Commission as part of the Second Constitutional Procedure known as the Chamber of Deputies.[120] The proposal seeks to modify the Sanitary Code by prohibiting the destruction of safe, surplus food and promoting the free donation of healthy foods, consistent with Chile's nutrition initiatives.[121] This bill is the consolidation of several motions, including those that sought to do the following: (1) prohibit commercial establishments that sell or prepare food from wasting or disposing of food that has lost commercial value due to defective packaging, a brand or label change, or proximity of the expiration date; (2) require supermarkets larger than 100 square meters to donate food free of charge to certified receiving entities; and (3) permit restaurants and other retail food facilities to enable consumers to take home excess food.[122]

Congressional debate over the proposal addressed whether a law should require rather than encourage donations as well as the relationship between this proposal and the recent tax reform, which was intended to disincentivize the destruction of food and other goods that may be used for social assistance.[123] Supermercados de Chile A.G., a nonprofit trade union organization of supermarkets, previously commented on the proposed donation requirement, recommending instead that the government promote and scale up voluntary donation initiatives before imposing an enforced obligation to donate or a prohibition on food waste.[124]

Further, as noted earlier in this Legal Guide, the REP Law introduces a new scheme of liability within the context of waste prevention and recovery, generally, requiring producers to ultimately recycle packaging as well as other priority products.[125] The REP Law extends to single-use food and beverage packaging and, thus, implicates supermarkets and other food system actors that produce such materials.[126] At the time of this writing, MMA has not issued regulations that would extend the REP Law's application to include food waste; accordingly, the REP Law does not currently require supply chain actors to avoid food waste or impose a penalty on those that discard rather than donate safe, surplus food.

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 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. While Chile does not currently administer national grants or incentives related to food recovery or donation, provisions of the REP Law may enable MMA to adopt such programs that promote food recovery and donation as a means to reduce waste. As previously explained, however, MMA has not extended the scope of the REP Law to food waste.

Miscellaneous

Over the past decade, the national government's legislative energy has focused on the country's ongoing "war on obesity."[127] With one in every four school children and a third of the adult population affected by obesity,[128] Chile has adopted landmark legislation to regulate high-processed, low-nutrient foods that have flooded domestic food markets.[129] These laws impose a mandatory front-of-package warning sign for packaged foods that exceed certain thresholds for calories, sugar, saturated fat, and sodium; ban the sale of packaged foods featuring this warning label in schools; restrict the marketing of packaged foods featuring a warning label; and require nutritional education.[130]

To date, the government has not leveraged these efforts to improve population health as a means to further reduce food waste or incentivize food recovery and donation. However, MINSAL has recognized that the national School Feeding Program (PAE) is a major source of food waste, as children are less likely to consumer heathier, low-sodium food options.[131] The proposed bill requiring food donation, discussed in the section above, also promotes the donation of "healthy food" in accordance with the aforementioned legislation.[132] The authors of this Legal Guide recognize that population health and food donation share a common concern regarding access to adequate food and note the potential for overlap in future legislative and policy development.

As Chile continues to respond to the global pandemic at the time of this writing, it may also be relevant to consider the Law on Donations in the Case of Catastrophes (*Ley sobre Donaciones en Caso de Catástrofe*), which promotes the donation of food and other basic necessities in times of emergency.[133] Such donations made to the state, public, or private receiving institutions (foundations or corporations) and certain universities are entirely exempt from taxes. Donors may claim a deduction for all or part of the donation, even if the deduction exceeds the 5% cap that ordinarily applies to donations.[134] The Chilean government has recognized the importance of this Law and the tax benefits it provides as part of the nation's pandemic response.[135]

CONCLUSION

This Legal Guide is intended to identify Chile's current laws, policies, and programs that relate to food waste or 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 can provide an additional social safety net. The Chilean government has demonstrated an increasing interest in the issue of food loss and waste, seeking to develop multistakeholder programs and policies under the leadership of the National Committee for the Prevention and Reduction of Food Losses and Waste. Recent tax reform adopted in March 2020 also helps reinforce food recovery and donation as a financially beneficial alternative to discarding safe, surplus food. Pending legislation that would require food donation, the legal framework for waste management, the promotion of recycling, and the extension of producer liability may also serve as important vehicles for addressing issues of food loss and waste at the national level.

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

ENDNOTES

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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.

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13 FLPC would like to express its gratitude to the Chilean Food Banking Network (*Red de Alimentos* or La Red) for its contribution to this Legal Guide, as well as many other NGOs, businesses, and government agencies that shared input with the FLPC team.

14 FLPC and GFN recognize that the legal and policy landscape relevant to preventing food loss and waste and promoting food donation is changing rapidly. Therefore, the contents of this Legal Guide reflect the state of the landscape at the time of this writing (August 2019 to December 2020).

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34 *Pérdida y Desperdicio de Alimentos*, Oficina de Estudios y Políticas Agrarias, https://www.odepa.gob.cl/temas-transversales/agricultura-sustentable/perdida-y-desperdicio-de-alimentos (last visited Dec. 24, 2020). The National Committee is chaired by the Office of Agricultural Studies and Policies (*Oficina de Estudios y Políticas Agrarias* or ODEPA) within the Ministry of Agriculture (*Ministerio de Agricultura* or MINAGRI). It comprises members from MINAGRI's Agricultural Research Institute (INIA); the Chilean Agency for Food Quality and Food Safety (*Agencia Chilena para la Inocuidad y Calidad Alimentaria* or ACHIPIA); the Ministry of the Environment; the Chilean Food Banking Network (*Red de Alimentos* or La Red); the University of Santiago Chile; and the Sustainable Value Chains organization (*organización Cadenas de Valor Sustenables*).

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