



# PARAGUAY RECOMMENDATIONS 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 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 <a href="https://www.atlas.foodbanking.org">www.atlas.foodbanking.org</a>.

### 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 <a href="https://www.chlpi.org/food-law-and-policy">www.chlpi.org/food-law-and-policy</a>.



### **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 <a href="https://www.foodbanking.org">www.foodbanking.org</a>.



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# **TABLE OF CONTENTS**

About These Recommendations	1
Summary of Recommendations	2
Introduction	3
Legal Challenges & Policy Recommendations	3
Date Labeling	3
issue Overview	
Recommended Policy Actions	4
Liability Protection for Food Donations	5
Issue Overview	
Recommended Policy Actions	5
Tax Incentives and Barriers	5
Issue Overview	
Recommended Policy Actions	6
Government Grants and Incentives	
Issue Overview	7
Recommended Policy Actions	7
Conclusion	7

# ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas project, a partnership between the Harvard Law School Food Law and Policy Clinic (FLPC) and The Global FoodBanking Network (GFN). The Atlas project is an innovative partnership designed to map the laws and policies affecting food donation in countries across the globe and provides a comparative legal analysis based on these findings. For each country, the Atlas project produces a Legal Guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guide recognizes universal issues that impact efforts to reduce food loss and waste (FLW) and increase food recovery. These issues include food safety, date labeling, liability, taxes, donation requirements and food waste penalties, and government grants or funding programs.

In-country interviews with relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the content of the Legal Guides and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These recommendations serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of the recommendations is to highlight select actions for improving upon laws, policies, and programs relevant to food loss, waste, and donation.

This document sets forth recommendations focused on Paraguay, where 25.3% of the population experienced moderate to severe food insecurity between 2019 and 2021, and 269,000 people could be fed annually with the amount of food wasted at the retail level alone. The discussion below provides a brief overview of the legal issues most pertinent to food donation, which the Paraguay Legal Guide explains in detail. The recommendations included in this report are not exhaustive but offer select best practices and policy solutions to reduce FLW and combat food insecurity through stronger food donation laws and policies in Paraguay.

# SUMMARY OF RECOMMENDATIONS

The recommendations in this document provide a starting point for stakeholders in Paraguay to strengthen the legal and policy framework relevant to food donation. Food banks and other organizations whose mission is to reduce food waste and increase food donation (collectively referred to as "food recovery organizations"), donors, and policymakers should consider additional opportunities to advance food donation and reduce food waste. In summary, the recommendations are as follows:

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

- · Pass a law or draft guidance to implement a dual date labeling regime.
- Conduct a national campaign for industry and consumers to increase awareness and understanding of date labels.

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

• Produce and disseminate clarifying guidance on the Food Donation Law's liability protection for donors and intermediaries.

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

- · Allow donors to reclaim the value-added tax (VAT) for donated food.
- Offer tax credits and increase deductions for food donations made to food recovery organizations and other intermediaries.
- Provide a tax deduction for activities associated with the storage, transportation, and delivery of donated food.

To secure the infrastructure that permits efficient and effective food donation:

• Provide government grants for equipment and other resources to glean, transport, process, and store donated food.

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Paraguay has made great strides to combat poverty in recent years. Between 2002 and 2020 the federal poverty rate was reduced from 58% to 26.9%.<sup>2</sup> However, recent studies show that rising incomes in the poorest populations have not been enough to compete with rising food prices.<sup>3</sup> In the face of this disparity, Paraguay's economic growth still leaves 10% of the population facing hunger and malnutrition.<sup>4</sup> The agriculture sector produces enough food to hypothetically feed nine times Paraguay's population. Paraguay has also become a net exporter of food. Yet high levels of FLW and rising food costs are still leaving many people hungry.<sup>5</sup>

To address food insecurity, Paraguay passed Ley 6601 that established the Special Regime for the Donation of Food (El Régimen Especial para la Donación de Alimentos, hereinafter "Food Donation Law") to ensure some food that is produced makes it to those who need it most. Article 2 of the law describes food that is safe for human consumption as acceptable for food donation, even if the food cannot be used for commercial purposes. Article 3 creates a National Council for Food Donation (Consejo Nacional para la Donación de Alimentos, hereinafter the Council) and places the Ministry of Social Development (Ministerio de Desarrollo Social, or MSD) as the executing agency. Under Article 4, any person or entity in the nation is allowed to donate food to those in need. Article 5 dictates that the food be stored and transported properly. Pursuant to Article 6, donated food must be labeled with an expiration date that has not passed unless it is accompanied by a memo explaining why the expiration date has been extended. This same section allows companies to remove their branding from labels on donated food. Article 7 lays out requirements for receiving institutions, including a prohibition on donees selling food they have received. Article 8 places inspection, control, and monitoring under MSD. Article 9 lists the members that must be included in the Council. Article 10 prescribes that the representative from MSD will be chair. Article 11 places MSD in charge of the institutionalization of the Council. Article 12 lists the functions of the Council. Article 13 protects donors from civil and criminal liability for donated food. Finally, Article 14 states that food donations will not be taxed.

The Food Donation Law is a great stepping stone to other policies that can get food that would otherwise be wasted to those who need it most. Paraguay could use a variety of methods to enhance this framework. Government leaders should adopt a clear and effective date labeling scheme and produce and disseminate guidance on the liability protections offered to food donors in the new law. The nation should also allow donors to recoup the value-added tax (VAT) for donated food and offer tax deductions, tax credits, and other government grants and incentives to those engaged in FLW reduction efforts.

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

# LEGAL CHALLENGES & POLICY RECOMMENDATIONS———

# **Date Labeling**

### **Issue Overview**

A major driver of food waste and an obstacle to food donation is the general misconception about date labels such as "sell by," "use by," or "best by" affixed to food products. Many donors and consumers interpret these date labels as indicators of food safety. Yet, for the vast majority of foods, date labels indicate freshness or quality rather than food safety, and few foods become more likely to carry foodborne illness-causing bacteria over

time. Nevertheless, cautious donors and food recovery organizations may discard food once the date passes even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research shows that consumers generally confuse date labels with indicators of safety rather than quality. In the United Kingdom, for example, research shows that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.<sup>6</sup> Similarly, 84% of Americans report throwing away food after the expiration date passes due to safety concerns, even if there is minimal risk of a foodborne illness at that time.<sup>7</sup> This confusion occurs in the home but also impacts food businesses' willingness to donate and creates a stigma against past-date food among food donation recipients.

The date labeling regulations in Paraguay cause similar confusion, undermining other efforts to reduce food waste. As a member of Mercosur, a regional trade bloc, and under domestic law Derecto 8064, entities in Paraguay must select a phrase from a prescribed list, such as "consumir antes de" (consume before) or "consumir preferentemente antes de" (consume preferably before), to precede the expiration dates that are required on certain foods. However, these phrases are not defined, and there is no differentiation between date labeling phrases used to indicate quality or safety.

Paraguay is a member of *Codex Alimentarius*, an international food standards setting body organized by the Food and Agriculture Organization of the United Nations and the World Health Organization.<sup>9</sup> Among *Codex*'s standards are distinct labels that distinguish between quality- and safety-related dates. However, Paraguay has not adopted *Codex*'s recommended date labeling scheme.<sup>10</sup>

In terms of food donations, it is legal to donate food past the expiration date if accompanied by a memo explaining why it is still safe to eat.<sup>11,12</sup> This policy is beneficial because some food that is past its duration date is still safe to eat and, as mentioned above, no distinction between these safety-based and quality-based dates exists in Paraguay's legal scheme.

### **Recommended Policy Actions**



### PASS A LAW OR GUIDANCE TO IMPLEMENT A DUAL DATE LABELING REGIME.

Paraguay has national regulations for date labeling. However, the regulations do not adequately explain to consumers, donors, and food recovery organizations which dates indicate safety and which indicate quality. Based on *Codex* and global best practices, Paraguay should adopt a dual date labeling scheme distinguishing between quality-based and safety-based dates.<sup>13</sup> This can be accomplished by passing a law through the legislature or through administrative guidance.

# 2.

# CONDUCT A NATIONAL CAMPAIGN FOR INDUSTRY AND CONSUMERS TO INCREASE AWARENESS AND UNDERSTANDING.

In addition to date label changes, Paraguay should also conduct a campaign to educate consumers and entities in the supply chain about what the new date labeling terms mean. By doing so, less food will be wasted and there will be less stigma around consuming food after the quality-based date passes. The campaign should highlight the meaning behind the two different labels and that it is safe to consume food after the quality-based date passes.

# **Liability Protection for Food Donations**

### **Issue Overview**

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

Paraguay's Food Donation Law protects food donors from liability. Upon delivery of the donated food to either an institutional intermediary such as a food bank or the end beneficiary, donors are released from all civil and criminal liability for any prior acts or omissions regarding the safety of the food. This protection also extends to food banks and other institutional intermediaries themselves. However, Paraguay's law draws an exception to this broad liability protection in instances of fraud or when the fault is attributable to a donor.

It is unclear, however, how these protections play out in practice because "faults attributable to a donor" are not defined or described in the law, nor are the requirements necessary to receive protection, such as following specific food safety regulations. Paraguay's Food Donation Law allows food to be donated only before it has decomposed or expired,<sup>17</sup> mandates that donated food is stored in hygienic conditions,<sup>18</sup> and requires donors to provide information regarding the safe conservation, storage, cooking time, and preparation of the donated product.<sup>19</sup> The law does not identify whether a violation of these requirements negates liability, nor whether a "fault attributable to a donor" includes a donor's negligence or only their intentional acts that might cause harm.

### **Recommended Policy Actions**



# PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON THE FOOD DONATION LAW'S LIABILITY PROTECTION FOR DONORS AND INTERMEDIARIES.

To increase food donations to food recovery organizations, the Paraguayan government should produce and distribute guidance on the liability protections offered to potential food donors and intermediaries. Such guidance would help potential food donors and intermediaries understand the protections—and the exceptions thereof—provided by the Food Donation Law. Illustrating the kinds of acts and omissions that are exceptions to the general protective rule would provide greater guidance for donors, food banks, and beneficiaries. The Paraguayan government should share information regarding scenarios in which a donor may or may not be held liable to help put potential donors at ease and increase awareness of liability protection. By increasing awareness and clarity surrounding liability protection, food donations are likely to increase, thereby reducing hunger.

### **Tax Incentives and Barriers**

### **Issue Overview**

Food donation helps mitigate the costs of hunger and stimulate the economy, but it can be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help offset these expenses and incentivize donation, or they can create an additional barrier to donation, contributing to greater FLW. Corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction or credit to offset the cost of transportation and logistics.

Currently, Paraguay has only nominal tax incentives for food donation. Corporations can deduct charitable contributions to registered public benefit entities (PBE) from their taxes, but only up to 1% of their annual gross income, an ultimately negligible amount.<sup>20</sup> Individual taxpayers may also deduct 1% of their income for charitable contributions to the same entities as corporations.<sup>21</sup>

Paraguay also has some tax-related financial barriers for those who wish to donate food. Paraguay's value-added tax (VAT), while reduced for basic processed foods and raw agricultural products, may still pose a barrier. Additionally, Paraguay's Food Donation Law declares that food donations are not subject to taxation. However, donors of processed foods are unable to reclaim the input VAT for food that is donated instead of sold, but they can reclaim the input VAT if the food is thrown away. This difference ultimately places a penalty on those who donate compared to those who waste food.

### **Recommended Policy Actions**

# ALLOW

# ALLOW DONORS TO RECLAIM THE VALUE-ADDED TAX (VAT) FOR DONATED FOOD.

While the standard VAT rate in Paraguay is 10%, a reduced rate of 5% applies to basic processed foods and agricultural goods that remain in their natural state.<sup>24</sup> Paraguay should allow donors to reclaim the VAT on the foods they choose to donate to ensure that it is not a barrier to food donation.

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

Paraguay currently allows donors to deduct up to 1% of annual gross income in charitable contributions.<sup>25</sup> However, to encourage potential food donations, the government should increase the allowable percentage that can be deducted or offer specific tax credits for donors that choose to send food to recovery organizations.

Tax deductions may incentivize food donation among corporate donors, while offering a tax credit for food donation may encourage donation among farmers and smaller donors with lower taxable income. Compared with a tax deduction, which reduces the amount of income on which taxes are calculated, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.<sup>26</sup> Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, lower-revenue businesses than a tax deduction.

A tax credit or deduction should be offered at the national level. The Paraguayan government may still limit the total credit or deduction in a given tax year by capping a percentage of the value of donated food or the total dollar amount or percentage of income of the credit or deduction that can be claimed. But before adopting such limits, the government should balance the benefit with the potential deterrent effect that limits may have on food donation. At minimum, donors should be able to claim a deduction up to 10% of their taxable income, as is the case in Costa Rica and South Africa.<sup>27</sup> However, best practice countries use caps that exceed 10%, if they implement caps at all. For example, Colombia offers tax deductions and credits equivalent to 25% of the value of donations in the taxable year with no annual cap.<sup>28</sup>

# 3.

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

Food donors may incur additional costs for storing, transporting, and delivering food that would otherwise have been discarded. In light of these costs, Paraguay should offer a tax deduction that offsets some of these

expenses. This would increase the financial benefit companies receive when donating food and encourage them to develop the infrastructure necessary to store, transport, and deliver food rather than throw it out.

In France, for example, the national tax scheme provides charitable food donation tax credits, which individual or corporate donors can claim not just for the value of the donated food but also for costs associated with its transportation and storage.<sup>29</sup> The tax scheme looks to the "cost price" of the service, which focuses on the total cost the donor accumulates for the item's storage or delivery.<sup>30</sup> Accounting for the logistical expenses has already significantly lowered the total costs of donating food to nonprofit organizations in the country. E.Leclerc, a supermarket in France, has calculated that the tax break lowers the cost of shipping one ton of produce to a food recovery organization from €372 to €65.59.<sup>31</sup>

### **Government Grants and Incentives**

### **Issue Overview**

National or local grants and incentive programs can be important resources for food donation initiatives, especially as alternatives or supplements to tax incentives. For example, government grants can help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. Government funding can also support new technological innovations to make food donation more efficient and sustainable. Paraguay does not currently offer any national grants for food donation infrastructure needs.

### **Recommended Policy Actions**

PROVIDE GOVER

PROVIDE GOVERNMENT GRANTS FOR EQUIPMENT AND OTHER RESOURCES TO GLEAN, TRANSPORT, PROCESS, AND STORE DONATED FOOD.

Grants and incentive programs funded at the national, provincial, or local level offer an important resource for food donation initiatives, as cost is a main barrier preventing food businesses from donating. More specifically, transportation and storage costs are often cited as the main expenses that manufacturers, retailers, and restaurants need to overcome to donate food.<sup>32</sup> The Paraguayan government should establish grant programs targeted at creating infrastructure to store, transport, and deliver food to food recovery organizations.

Many countries have grant programs to encourage food recovery. For example, in 2019 Argentina's Secretariat of Government of Agroindustry and the Inter-American Development Bank launched a contest to grant financing for innovative food waste solutions in the country's horticulture sector.<sup>33</sup> The grant is administered with the support of the Argentine Network of Food Banks.<sup>34</sup> The Paraguayan government could create a similar grant program to help food donors and food banks acquire equipment and resources necessary for gleaning, storing, processing, and transporting food for donation. The government could also provide grants to support new innovations and emerging technologies that will make food donation more efficient and sustainable.

# CONCLUSION \_\_\_\_

While these Policy Recommendations are intended to help strengthen food donation in Paraguay, they are not exhaustive. Those committed to reducing FLW and promoting food recovery should seek the advice of legal experts, policymakers, and other stakeholders to identify the most effective and feasible policy interventions.

## **ENDNOTES**

- Prevalence of moderate or severe food insecurity in the population (%) Paraguay, World Bank, <a href="https://data.worldbank.org/indicator/SN.ITK.MSFI.ZS?locations=PY">https://data.worldbank.org/indicator/SN.ITK.MSFI.ZS?locations=PY</a> (last visited Jan. 19, 2023) [https://perma.cc/T8JQ-Z6M3]; FAO: En Paraguay se desechan alimentos para 269.000 personas, Ultima Hora (Jul. 28, 2014), <a href="https://www.ultimahora.com/fao-paraguay-se-desechan-alimentos-269000-personas-n815732.html">https://perma.cc/SWZ4-ADCF</a>].
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- <sup>8</sup> *Id.*; Emily M. Broad Leib et al., Argentina Recommendations Food Donation Law and Policy, 6 (2020), <a href="https://www.foodbanking.org/wp-content/uploads/2020/06/Argentina-Recommendations.pdf">https://www.foodbanking.org/wp-content/uploads/2020/06/Argentina-Recommendations.pdf</a> [https://perma.cc/YW85-LE2U].
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- Paraguay's Food Donation Law currently allows food to be donated past its expiration date, as long as it is accompanied by a memo explaining why it is safe for consumption. After an update to the date labeling laws and a successful consumer education campaign (see the second recommendation), Paraguay may be able to remove the requirement that past-date food be accompanied by a memo because everybody will already know that food is safe to eat beyond a quality-based date.
- <sup>14</sup> Food Donation Law, *supra* note 11, at art. 13.
- <sup>15</sup> *Id.*
- <sup>16</sup> *Id*.
- <sup>17</sup> Food Donation Law, *supra* note 11, at art. 5.
- <sup>18</sup> Food Donation Law, *supra* note 11, at art. 6.
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- <sup>29</sup> *Id.*
- <sup>30</sup> *Id*.
- <sup>31</sup> *Id*.
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