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## **RECOMMENDATIONS**

### FOOD DONATION LAW AND POLICY

## Authors

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## About The Global Food Donation Policy Atlas

The Global Food Donation Policy Atlas is a first-of-its-kind initiative to promote better laws around food donation in order to help address both 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 partnership 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 [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. Our focus is 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](http://www.chlpi.org/FLPC).



## About The Global FoodBanking Network

The Global FoodBanking Network 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](http://www.foodbanking.org).



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# ABOUT THESE RECOMMENDATIONS

This document is a product of The Global Food Donation Policy Atlas, 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 15 countries over the course of two years and to provide a comparative legal analysis based on these findings. For each of these countries, the Global Food Donation Atlas project will produce a legal guide to identify the laws relevant to food donation in that country. While the landscape differs across geopolitical borders, the Legal Guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, liability, taxes 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 guide and revealed priority actions for law and policy change. Based on these findings, FLPC has developed specific recommendations for each country. These Recommendations are intended to serve as a companion to the Legal Guides, though both documents may stand alone. The purpose of these Recommendations is to highlight select actions for improving upon laws, policies and programs relevant to food loss, waste, and donation.

The present document sets forth recommendations focused on Mexico, where 20.4 million tons of food are lost or wasted each year,<sup>1</sup> and an estimated 25.5 million people are food insecure.<sup>2</sup> The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Mexico Legal Guide. The recommendations included in this report are not exhaustive, but offer select best practices and policy solutions to reduce food loss and waste and combat food insecurity through stronger food donation laws and policies in Mexico.



# SUMMARY OF RECOMMENDATIONS

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

To ensure that food is donated safely and does not pose risks to recipients, as well as provide clarity to encourage food donors, the federal government should:

- Amend Article 199-Bis of the General Health Law to distinguish food safety requirements imposed on food destined for donation from food offered for sale.
- Adopt an Official Mexican Norm to regulate food safety in the context of food donation.
- Produce and disseminate clarifying guidance on food safety requirements relevant to donation.

To ensure that quality-based date labels do not result in the disposal of food that is otherwise safe for consumption or donation, the federal government should:

- Issue clarifying guidance to distinguish between the safety-based “expiration date” and the quality-based “preferred consumption date.”
- Amend the Official Mexican Norm on general labeling specifications for pre-packaged foods to explicitly permit the donation of food after the preferred consumption date.
- Promote consumer education and awareness on the meaning of date labels and application to donated food.

To ensure concern for liability arising out of donating food does not deter potential donors, the federal government should:

- Adopt federal legislation that establishes clear liability protection for food donors and food recovery organizations that act in good faith.
- Establish a scope of liability protection that allows food recovery organizations and other intermediaries to charge a nominal fee for donated food.
- Protect the past-date donation of food if the label relates to quality rather than safety.

To ensure that food donors and food recovery organizations are sufficiently incentivized to engage in food donation, rather than discard food that is suitable for human consumption, the federal government should:

- Provide an enhanced tax deduction for food donations and activities associated with the storage, transportation and delivery of donated food.
- Offer tax credits for food donations made to “authorized donees” and other food recovery organizations.

To ensure that food donors and food recovery organizations are able to more effectively and safely recover, handle, transport, and distribute surplus food, the federal government should:

- Increase government grants and investments in food recovery resources, innovation and infrastructure improvements.

# INTRODUCTION

Food loss and waste represents a major environmental, economic, and social challenge in Mexico.<sup>3</sup> Carbon dioxide emissions generated from wasted food, for example, exceeds the emissions of more than 14 million vehicles; the total cost of water that is lost with wasted food is approximately \$7.9 billion per year.<sup>4</sup> Most of the 20.4 million tons of food that is lost or wasted each year in Mexico occurs upstream in the supply chain, meaning that food is discarded before it reaches consumers. This loss is due in part to inefficient or inadequate management, transportation, distribution, and storage systems, as well as inappropriate packaging material and practices.<sup>5</sup>

Overripe produce, excess purchasing, and improper handling or storage are among the top drivers of food loss and waste at the consumption stage.<sup>6</sup> Hundreds of thousands of tons of fresh, nutritious, and unprocessed foods are lost in the pre-consumer supply chain.<sup>7</sup> Assessment of these losses has indicated that certain supply chain reforms, including investments in cold-chain infrastructure (refrigeration during transportation and storage), could reduce losses of these staple fresh food items.<sup>8</sup>

The government has elevated the reduction of food loss and waste as a national and regional priority, actively engaging with local and international experts and initiatives to promote more sustainable production and consumption.<sup>9</sup> For example, in August of 2019, the Secretariat of Environment and Natural Resources (*Secretaría de Medio Ambiente y Recursos Naturales* or SEMARNAT), along with other representatives from the federal government, collaborated with the World Bank Group and the Waste and Resources Action Programme (WRAP) and other private actors to develop a *Conceptual Framework for a National Strategy for Food Loss & Waste for Mexico*.<sup>10</sup>

The government has not explicitly aligned efforts to reduce food loss and waste and those to combat food insecurity and hunger; the recently created Mexican Food Security Agency (*Seguridad Alimentaria Mexicana* or SEGALMEX), for example, is tasked with promoting agricultural productivity and food distribution to benefit vulnerable populations, but does not take into account the relationship between food insecurity and food loss and waste.<sup>11</sup> Nevertheless, private sector actors throughout Mexico have successfully reconciled these issues and invested in greater food recovery as a dual solution. Bancos de Alimentos de México (BAMX), the national food banking association comprised of 55 food banks across the country,<sup>12</sup> is leading this initiative. In 2018, alone, BAMX served 1.3 million beneficiaries with rescued and donated food.<sup>13</sup>

**MOST OF THE 20.4 MILLION TONS OF FOOD THAT IS LOST OR WASTED EACH YEAR IN MEXICO OCCURS UPSTREAM IN THE SUPPLY CHAIN, MEANING THAT FOOD IS DISCARDED BEFORE IT REACHES CONSUMERS.**

Despite these efforts, gaps and ambiguities within laws most relevant to food donation have also created barriers to greater donation. The following sections briefly summarize some of the most common legal barriers, as identified and described in more detail in the Legal Guide, and offer tailored policy recommendations to address these challenges.

# LEGAL CHALLENGES & POLICY RECOMMENDATIONS

## Food Safety for Donations

### Issue Overview

In many countries, a key barrier to the donation of surplus food is the lack of knowledge or readily available guidance regarding safety procedures for food donation. 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 have been redirected to populations in need is instead destined for landfills.

In Mexico, the General Health Law, which contains most federal food safety standards, features a provision that explicitly addresses food donation: article 199-Bis, which was added to the law in 2000, places a general responsibility on all organizations supplying, receiving or distributing food to comply with sanitary controls set forth in the comprehensive law.<sup>14</sup> However, it does not offer additional guidance or reference specific provisions.<sup>15</sup> This ambiguity is likely to give rise to confusion, as the General Health Law's chapter on sanitary controls applies not just to food, but to medical equipment, medicines, and pesticides, among other products;<sup>16</sup> accordingly, several provisions impose sanitary controls that do not clearly apply to food.

Article 199-Bis also requires food donation institutions to operate establishments that meet adequate sanitary standards; employ trained staff and equipment for the safe handling and transport of food, distribute food in a timely manner, and adopt measures of sanitary control, as mandated by the authorities.<sup>17</sup> Imposing these requirements on food recovery organizations and charitable institutions delivering food to final beneficiaries fails to account for the limited resources available to these organizations and to the realities of their operations. For example, not all food recovery organizations will facilitate donations through a structural establishment—some may be satellite or virtual operations that do not rely on warehouses to store the food. And, as previously mentioned, for those organizations that do operate establishments, the law seems to impose sanitary controls that may not be relevant for food.

### Recommended Policy Actions

- 1. AMEND ARTICLE 199-BIS OF THE GENERAL HEALTH LAW TO DISTINGUISH FOOD SAFETY REQUIREMENTS IMPOSED ON FOOD DESTINED FOR DONATION FROM FOOD OFFERED FOR SALE.**

In order to impose food safety requirements that are better aligned with the donation process, the government should propose amendments to the General Health Law. Specifically, these amendments should update article 199-Bis to clearly identify sanitary controls that apply to food donors and food recovery organizations that are supplying, receiving and distributing food. Amendments should also update the requirements imposed on these organizations in order to better reflect the dynamic and innovative models of food recovery. For example, the law currently imposes a requirement that organizations receiving and distributing donated food operate an establishment that meets sanitary controls; this requirement overlooks those organizations that conduct on-farm recovery and transport food directly to charitable organizations or beneficiaries, without first bringing the donation to a storage facility.

In Torreon, the food bank (Banco de Alimentos Cáritas de Torreon) recently received a grant from GFN to

purchase a refrigerated truck. This acquisition not only allows the food bank to distribute safe but perishable foods to communities in remote regions, but it also presents an option for the food bank to provide this assistance without operating an “establishment.” Under the current food safety regime, however, adopting this approach would violate the food safety requirements set out in article 199-Bis. With emerging models of food recovery redefining the traditional notion of food donation, the government should consider updating its food safety law to offer more responsive and relevant guidance.

## **2. ADOPT AN OFFICIAL MEXICAN NORM TO REGULATE FOOD SAFETY IN THE CONTEXT OF FOOD DONATION.**

Food regulation is also administered through official, mandatory rules known as Official Mexican Norms (*Normas Oficiales Mexicanas* or NOMs) that interpret and supplement the General Health Law. These regulations are set forth by the Ministry of Health (*Secretaría de Salud* or SSA), acting through Federal Commission for Protection against Sanitary Risks (*Comisión Federal para la Protección contra Riesgos Sanitarios* or COFEPRIS),<sup>18</sup> as well as the National Food Safety and Agri-Food Quality Service (*Servicio Nacional de Sanidad, Inocuidad y Calidad Agroalimentaria* or SENASICA) within the Secretariat or Ministry of Agriculture and Rural Development (*Secretaría de Agricultura y Desarrollo Rural* or SADER).<sup>19</sup> To date, there is no NOM that speaks directly to food donation.

As these technical regulations are regularly modified to respond to new information concerning food safety, public and environmental health, and consumer protection,<sup>20</sup> the aforementioned authorities could publish a NOM that sets forth food safety regulations specific to food donors and food recovery organizations. Offering such a clear regulation would eliminate confusion among food donors and reduce the food safety burden currently imposed on food recovery organizations under the General Health Law.

## **3. PRODUCE AND DISSEMINATE CLARIFYING GUIDANCE ON FOOD SAFETY REQUIREMENTS RELEVANT TO DONATION.**

Clear guidance from food safety enforcement agencies on what General Health Law provisions or other food safety requirements apply to donated food would ease concerns of food donors and food recovery organizations, and support increased and safer donation. Enforcement of the General Health Law is designated to COFEPRIS, a decentralized and autonomous body within the Ministry of Agriculture.<sup>21</sup> The General Health Law empowers COFEPRIS to identify and assess risks to human health and to establish national policies relating to the protection against health risks and its implementation with respect to food.<sup>22</sup>

COFEPRIS coordinates with more than 100 authorized third-party organizations across Mexico’s 25 states to make sure products comply with food labeling and food safety regulations.<sup>23</sup> It also provides guidance on sanitary condition requirements that are necessary to comply with Ministry of Health regulations.<sup>24</sup> COFEPRIS could offer guidance to elaborate on article 199-Bis and the food safety regulations in the context of food donation. It could also coordinate with its network of third-party organizations to ensure that food donors and food recovery organizations have an opportunity to contribute to the design and implementation of this clarifying guidance.

# **Date Labeling**

## **Issue Overview**

A major driver of food waste and obstacle to food donation is the general misconception about the 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 the safety of food. Despite this interpretation, 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

illnesses over time. Donors and food recovery organizations, however, being cautious about food safety, may discard food once the date has passed even if the food is perfectly safe to donate and consume.

In other countries that have measured the impact of date labels, research has found 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>25</sup> 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.<sup>26</sup> This confusion occurs in the home but also impacts food businesses' willingness to donate as well as stigma against past-date food among food donation recipients.

This cycle of confusion and waste occurs in Mexico under the current date labeling regime. While the law provides for separate safety-based and quality-based labels (*i.e.* a “dual-labeling” system), it does not explain whether the donation of food is restricted by these dates. Date labeling is regulated through an Official Mexico Norm, NOM-051 – General Labeling Specifications of Pre-Packaged Foods and Non-Alcoholic Beverages (*Especificaciones generales de etiquetado para alimentos y bebidas no alcohólicas preenvasados*), which is the main food and beverage regulation.<sup>27</sup> Specifically, NOM-051 requires foods to be labeled with either an expiration date (*fecha de caducidad, caducidad, fecha de expiración, expira, etc.*) or preferred consumption date (*consumir preferentemente antes del*).<sup>28</sup> According to the regulation, the expiration date refers to the date after which the pre-packaged food's safety *and* quality characteristics are so diminished that the food cannot be safely consumed.<sup>29</sup> The preferred consumption date, on the other hand, is the date after which the product cannot be sold, but can still be consumed.<sup>30</sup>

With the exception of a few food items, the law does not provide guidance as to when the expiration date as opposed to the preferred consumption date should be applied; it is instead left to the manufacturer's discretion to choose the specific date and preceding language. And, while the regulation clearly prohibits the sale of items after the affixed preferred consumption and expiration dates, it does not address whether food may be donated or offered free of charge after the preferred consumption date has passed. As a result, potential donors are uncertain as to whether food can be donated after this quality-based date and may throw away all past-date food, even if the food is still suitable for human consumption.

## Recommended Policy Actions

### 1. ISSUE CLARIFYING GUIDANCE TO DISTINGUISH BETWEEN SAFETY-BASED “EXPIRATION DATE” AND THE QUALITY-BASED “PREFERRED CONSUMPTION DATE.”

Mexico's standard labeling scheme in NOM-51, which features distinct safety-based and quality-based labels, is a positive development towards the reduction of waste; many other countries, including EU Member States and the Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, have also called for the standardization and adoption of a dual date labeling system with separate quality and safety date label phrases.<sup>31</sup> However, there remains uncertainty as to the intended meaning of the expiration date and preferred consumption date among consumers and a lack of clear direction for manufacturers on the appropriate application.

To resolve these uncertainties, several EU Member States have issued guidance clarifying the meaning of these labels, the intended application, and the impact of these dates on food donation.<sup>32</sup> In Mexico, the Ministry of Economy and Ministry of Health, which are jointly responsible for overseeing the implementation of and compliance with NOM-051, should issue similar guidance. The guidance could offer an explanation to help manufacturers understand when each date is appropriate to use, and to ensure that retailers and consumers are accurately interpreting these labels.

## 2. AMEND THE OFFICIAL MEXICAN NORM ON GENERAL LABELING SPECIFICATIONS FOR PRE-PACKAGED FOODS TO EXPLICITLY PERMIT THE DONATION OF FOOD AFTER THE PREFERRED CONSUMPTION DATE.

The government should amend NOM-051 to expressly permit the donation of packaged foods after the preferred consumption date. As written, the regulation imposes a clear prohibition on the *sale* of goods after the preferred consumption date has passed; yet, it also states that the food is still safe for consumption. In many countries, including Mexico, it is this categorization, *i.e.*, food without commercial value but which is still suitable for human consumption, that drives unnecessary food waste. Without explicit permission to distribute or offer (free of charge) the food, donors are likely to discard food once the affixed date has passed, simply as a matter of precaution.

The Ministry of Economy and Ministry of Health should therefore amend NOM-051 to grant food donors clear permission to donate food after the preferred consumption date has passed. Similarly, the amendment should make it clear that food recovery organizations and other receiving institutions may accept and distribute food after this date. Not only will this amendment encourage food donations, but it will also reduce needless food waste of safe, surplus packaged foods.

## 3. PROMOTE CONSUMER EDUCATION AND AWARENESS ON THE MEANING OF DATE LABELS AND APPLICATION TO DONATED FOOD.

Many stakeholders in Mexico have expressed actual or perceived confusion as to whether expiration dates and preferred consumption dates indicate safety as opposed to quality.<sup>33</sup> National consumer education is critical to help inform donors, food recovery organizations, and consumers as to the distinction between these labels under the current regime, and especially following any clarifying amendments. Joint public and private sector initiatives may help to ensure that stakeholders understand that date labels should not stand as a barrier to donation. Any clarification to this regime, such as clear guidance from the government that food may be donated after the quality-based preferred consumption date, will also require campaigns to educate and increase awareness among donors, food recovery organizations, and consumers about this interpretation.

# Liability Protection for Food Donations

## Issue Overview

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. Other countries, including the United States and Argentina, have established protections for food donors and food recovery organizations so that these actors will not be held legally or financially responsible for resulting harm, provided that they acted in good faith and in accordance with relevant laws. Mexico does not offer federal liability protections for donors and intermediaries; as a result, food donation may be perceived as a potentially risky endeavor, even though food donors and food recovery organizations are unlikely to encounter a claim for damages.<sup>34</sup>

Articles 199-Bis and 464-Bis of Mexico's General Health Law provide for a specific designation of responsibility that may give rise to liability (and resulting penalties), but which apply only when harm arises from spoiled food that has been donated.<sup>35</sup> While Article 199-Bis holds institutions that distribute spoiled food exclusively responsible, and thus, potentially liable, Article 464-Bis expands the scope of liability to impose penalties on any person who, directly or by an intermediary, with actual knowledge or knowingly authorizes or orders the distribution of spoiled food which endangers a person's health.<sup>36</sup> In the case of negligence, a lesser penalty may be imposed.<sup>37</sup> These standards are both limited to situations involving harm to beneficiaries that has resulted from the distribution of spoiled food.

In all other situations giving rise of a claim of damages, food donors and food recovery organization are subject to the standards of liability set forth in Mexico's Federal Civil Code (*Código Civil Federal*): "contractual liability," "objective liability" and "extra-contractual" liability arising from "illicit acts."<sup>38</sup> The first standard, "contractual liability" is unlikely to be invoked by a claim brought by a beneficiary against a food recovery organization or food donor, as it only applies when parties enter into a contractual relationship.<sup>39</sup> Similarly, "objective liability" applies only in circumstances involving "inherently dangerous" mechanisms or substances, which does not include donated food, even if spoiled, altered, contaminated, mislabeled, or otherwise compromised.<sup>40</sup>

A claim of harm brought by a third party beneficiary against a food recovery organizations or food donor would therefore assert "extra-contractual" liability, the standard that is most commonly used by Mexican courts to resolve personal injury or wrongful death cases.<sup>41</sup> Under this standard, the person alleging injury would bear the burden of proving that the food recovery organization or food donor acted "illicitly" or "against good customs" and defend against a claim of contributory-negligence, *i.e.* show that the injury did not result from the victim's own "fault or inexcusable negligence."<sup>42</sup> Without further explanation of this standard, food donors and food recovery organizations are not likely to be held liable, as it is unclear what actions would qualify as "illicit" or "against good custom." The legislature has not offered clarifying definitions of these terms, nor is it likely to do so.<sup>43</sup> The courts are also unlikely to address any claim of wrongdoing brought against a food recovery organization or food donor, as federal civil liability cases in Mexico are so rarely brought before courts that they are considered "simply non-existent."<sup>44</sup>

While there may be a dearth of liability claims brought in Mexico, several states have deemed it appropriate to adopt liability protections for food donors and food recovery organizations, recognizing the perceived risk of donating food. In 2016, the federal government proposed national protections for food banks and food donors in The General Law to Promote Altruistic Food Donation (*Ley General para Fomentar la Donación Altruista de Alimentos* or the Altruistic Donation Law).<sup>45</sup> However, this law was not adopted. As a result, food donors and food recovery organizations are without broad liability protections.

## Recommended Policy Actions

### 1. ADOPT FEDERAL LEGISLATION THAT ESTABLISHES CLEAR LIABILITY PROTECTION FOR FOOD DONORS AND FOOD RECOVERY ORGANIZATIONS THAT ACT IN GOOD FAITH.

Mexico currently does not offer liability protections for food donors and food recovery organizations. As a result, food donors may prefer to discard safe, surplus food rather than donate it, out of concern that beneficiaries may attempt to hold food donors liable for any resulting harm. Especially when donating food to an intermediary, which may then distribute food directly to beneficiaries or charitable organizations, food donors lack control over how the donated food is handled and stored prior to consumption. To dispel these concerns, and present food donation as a more attractive and less risky option, the federal government should adopt legislation that establishes liability protections for donors similar to those offered in the United States and Argentina.

Specifically, the liability protection should grant food donors a presumption of good faith that would prevent the court from automatically holding these donors responsible if a recipient is harmed, as is the case under a strict liability scheme. So long as food donors adhere to all food safety laws and regulations relevant to food donation, the burden should shift to the individual who is claiming wrongdoing to prove that donor did not act in good faith. Only if the court is convinced that the food donor did not act in good faith will it consider whether the donor may be held liable for harm.

As explained above, under the Civil Code, the burden currently falls on the person alleging wrongdoing to prove that the defendant acted "illicitly" or against "good custom," similar to "good faith." However, neither the

legislature nor judiciary have defined these terms and the standards do not speak directly to food donation. Mexico's General Health Law currently requires proof that a donor acted "knowingly" or "negligently" in order to impose penalties; however, as previously mentioned, this standard is limited to situations in which a beneficiary is harmed from spoiled food.

With liability protections established in federal legislation, food donors would have a broader and clearer grant of protection, applicable to incidences of harm that may result not just from spoiled food but from food that has been otherwise compromised. Of course, this liability protection should not be absolute, and food donors should not be shielded from legal and financial responsibility if they demonstrate knowing or willful misconduct or negligence when handling food prior to delivery.

The liability protections should extend to food recovery organizations, once these entities take possession of the donated food. Currently, food recovery organizations, such as BAMX, enter into private agreements with food donors in which the food recovery organizations assume all legal responsibility for the donated food and any claim for damages that arises from the donation. This model leaves these food recovery organizations vulnerable to contractual liability with the donor, and to non-contractual liability from the beneficiaries. While liability protection for food recovery organizations would not completely shield them from claims brought by beneficiaries or donors, it would help to reduce the likelihood of liability provided that the organizations act in good faith and comply with applicable law.

## **2. ESTABLISH A SCOPE OF LIABILITY PROTECTION THAT ALLOWS FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES TO CHARGE A NOMINAL FEE FOR DONATED FOOD.**

Despite the broad scope of protection provided under the United States' and Argentina's respective legal frameworks, both of these countries limit the protection to include only food donations that are offered for free. As Mexico develops the aforementioned liability protections for food donors and food recovery organizations, it is critical that these protections should not impose a "no charge" requirement, *i.e.* a provision stating that food donation intermediaries would lose liability protection if they charge final recipients a fee for the donated food. This restriction hinders food recovery, as not allowing food to be sold at a nominal fee increases the burden on food recovery organizations, which must seek financial donations to support their operations as well as seeking food donations to pass on to those in need.

Further, allowing the low price sale of food donations would better support innovative models and other offerings by food recovery organizations, such as through social supermarkets (nonprofit grocery stores that sell donated food at a low cost and are popular throughout Europe) or other low-cost market-based opportunities to serve those in need. This approach is not unprecedented in Mexico: in Nuevo León, state law permits food banks to charge beneficiaries up to 10% of the value of the food for operational expenses.<sup>46</sup> To better support innovative food recovery models and other intermediaries at the national level, organizations should be permitted to charge a reduced or nominal fee for donated food. This scheme would thus benefit both food insecure populations and the intermediary, which could rely on a more sustainable funding source.

## **3. PROTECT THE PAST-DATE DONATION OF FOOD IF THE LABEL RELATES TO QUALITY RATHER THAN SAFETY.**

As previously explained, Mexico's current date label requirements do not clearly indicate whether food may be donated or offered for free once the affixed preferred consumption date has passed, even though this label is intended to convey food quality not safety. However, without a clear legal provision or statement from the government permitting the donation of food after the preferred consumption date has passed, food donors

and food recovery organizations, concerned about liability, are likely to discard food that is otherwise safe and suitable for human consumption. Any provision of liability protection should take into account this issue and explicitly permit the donation of past-date food, consistent with the recommendations offered earlier in this document.

## Tax Incentives and Barriers

### Issue Overview

Food donation helps to mitigate the costs of hunger and stimulate the economy, but it can also be expensive, as food donors must allocate time and money to recover, package, store, and transport surplus food that otherwise would be discarded, usually at no cost. Tax laws can either help to offset these expenses and create an incentive to donate, or they can create an additional barrier to donation, one which contributes to greater food loss and waste. With respect to tax incentives, corporate donors may be more likely to donate surplus food to food banks if they receive a charitable deduction to offset the cost of transportation and logistics.

Mexico permits corporations and other taxpayers to claim a tax deduction for the value of the donated good up to 7% of their taxable income from the previous year.<sup>47</sup> This benefit, set forth in the Income Tax Law (*Ley del Impuesto Sobre la Renta*), is limited to donations made to “authorized donees,” or qualified non-governmental organizations that are registered with the Tax Administration System (*Sistema de Administración Tributaria* or SAT).<sup>48</sup> The SAT also permits donors of “basic goods for human subsistence” to claim an additional monthly deduction of up to 5% the market value of the donated food, provided that the gross profit margin of the goods would have been equal to or greater than 10%.<sup>49</sup> If the gross profit margin of the goods would have been less than 10%, the monthly deduction is reduced to 50% of the margin.<sup>50</sup>

Further promoting donation as an economical alternative to discarding surplus food is the fact that taxpayers may still claim the 7% deduction for destroying food that has lost commercial value, as long as they have first offered the food to an authorized donee.<sup>51</sup> Donors must also provide the SAT with advanced notice of the intent to donate in the case of food products that are approaching the expiration date.<sup>52</sup> Accordingly, many donors may find it easier and just as financially beneficial to simply discard food rather than pursue donation.

### Recommended Policy Actions

1.

**PROVIDE AN ENHANCED TAX DEDUCTION FOR FOOD DONATIONS AND ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION AND DELIVERY OF DONATED FOOD.**

In light of the potentially high costs associated with donating food, Mexico should amend its Income Tax Law to offer an increased, or enhanced, tax deduction for food donors. This higher rate could match percentages offered under Nuevo León’s state law, under which donors can receive tax deductions for 50 to 100% of the value of the donated food.<sup>53</sup> The valuation of the donated food is determined by food banks, who issue fiscal vouchers documenting their valuation depending on the approximated “useful life” remaining for the food product and the percentage that is suitable for consumption.<sup>54</sup> Donors should also be permitted to claim the deduction even if the food is not distributed for free but for a nominal fee.

## 2. OFFER TAX CREDITS FOR FOOD DONATIONS MADE TO “AUTHORIZED DONEES” AND OTHER FOOD RECOVERY ORGANIZATIONS.

While an increased tax deduction may incentivize food donation among certain corporate donors, offering a tax credit for food donations is more likely to encourage donation among farmers and smaller donors who may not generate a lot of income during the year. Compared with a tax deduction, which reduces a taxpayer’s taxable income and is then used to determine the amount of taxes that must be paid, a tax credit is a direct dollar-for-dollar subtraction from the taxes owed.<sup>55</sup> Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-income businesses than a tax deduction.

## Government Grants and Incentives

### Issue Overview

Government grants for food recovery initiatives, infrastructure, and organizational support can help countries launch new programming or scale up existing donation efforts. Mexico’s federal government administers several agricultural support and poverty reduction programs consistent with the objectives of reducing food waste and loss. For example, the Social Infrastructure Contribution Fund (FAIS) is intended to finance basic works, social activities and investments that directly benefit populations in extreme poverty in accordance with the General Law of Social Development. As part of these rural development and poverty reduction initiatives, under the previous two administrations, the federal government also allocated funds to support the infrastructure of BAMX and expand the reach of food recovery efforts.<sup>56</sup> Currently, however, no such funds are available.

Such investments in infrastructure are critical for the expansion of food donation efforts, as food donors and food recovery organizations have cited the absence of sufficient cold-chain infrastructure as a major barrier to donation. Without sufficient cold-chain infrastructure, ensuring that perishable foods do not spoil during the rescue, recovery, and redistribution efforts poses a major challenge.<sup>57</sup> Food donors, including wholesale markets and corporate retailers, and food recovery organizations, including BAMX, are largely concentrated in urban areas, while producers and beneficiaries tend to live in rural regions. Food recovery organizations often lack resources to build or access cold-chain infrastructure, particularly when the point of production and recovery may be thousands of kilometers from the final beneficiary.<sup>58</sup>

Despite this challenge, there are currently no federal grants or public funding mechanisms specifically designed to support on-farm recovery or food donation, generally. While the Mexican Transport Institute (*Instituto Mexicano del Transporte* or IMT), the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (*Secretaría de Agricultura, Ganadería, Desarrollo Rural, Pesca y Alimentación* or SAGARPA), and other governmental organizations in Mexico have identified cold-chain management as a necessary strategy to reduce food loss and waste, infrastructure improvements have focused on export supply chains rather than domestic food recovery.<sup>59</sup> There are also no grant programs to support the research, development, innovation, or the human resources necessary to maintain and bolster food recovery operations.

### Recommended Policy Actions

## 1. INCREASE GOVERNMENT GRANTS AND INVESTMENTS IN FOOD RECOVERY RESOURCES, INNOVATION AND INFRASTRUCTURE IMPROVEMENTS.

Providing greater financial support for food donation logistics will enable food recovery organizations to significantly enhance their impact. Government investments in a food recovery innovation fund that helps

support on-farm harvest, packaging, storage, and distribution activities, for example, may help to expand the reach of existing food donation operations. Currently, the private sector is providing this much-needed financial support, particularly with respect to infrastructure improvements. Private food industry actors have sponsored the expansion of cold-chain infrastructure for Mexico's food banking network, recognizing the food safety challenges that arise when recovered food travels long distances.<sup>60</sup> However, food recovery organizations, farm councils, and retail trade associations in Mexico have still identified the gaps in cold-chain infrastructure as among the greatest barriers to on-farm food recovery and increased food donation.<sup>61</sup> Accordingly, the government should designate public grants for cold-chain development, as well as other employment and personnel support that will help to offset the costs of recovering and donating safe, surplus food.<sup>62</sup>

## **CONCLUSION**

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

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*descomposición o mal estado que ponga en peligro la salud de otro, se le impondrá la pena de seis meses a dos años de prisión o pena pecuniaria de 500 a 5 mil días de salario mínimo general vigente en el Distrito Federal o la zona económica de que se trate. Cuando la conducta descrita en el párrafo anterior sea producto de negligencia, se impondrá hasta la mitad de la pena señalada.”).*

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