



COSTA RICA

COSTA RICA **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 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.



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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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).¹ 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 Policy 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 Guides recognize universal issues that impact efforts to reduce food loss and waste and increase food recovery. These issues include food safety, date labeling, legal liability, taxes, and government grants or funding programs.

Insights from relevant stakeholders, including food banks and other food recovery organizations, food donors, government officials, and legal experts, further informed the contents of the Legal Guides, revealing priority actions for law and policy change. Based on these findings, FLPC 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.

This document sets forth recommendations focused on Costa Rica, where an estimated 40% of the country's food supply is lost or wasted² and an estimated 25.5% of the population was food insecure prior to the outbreak of the novel coronavirus (COVID-19) pandemic.³ The discussion below provides a brief overview of the legal issues most pertinent to food donation, which are explained in more detail in the Costa Rica 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 Costa Rica.



SUMMARY OF RECOMMENDATIONS

The recommendations contained in this document provide a starting point for stakeholders in Costa Rica 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.

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

- Amend the national food safety regulatory framework to explicitly state which food safety provisions apply to food donors and donation-receiving entities.
- Produce and disseminate permanent guidance to clarify which food safety requirements apply to donated food.

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

- Coordinate with the Secretariat for Central American Economic Integration (SIECA) to introduce a standardized dual date labeling scheme in the Central American Technical Regulation on General Labeling for Prepackaged Foods.
- Adopt a national dual date labeling scheme to clearly distinguish between safety-based and quality-based date labels and permit food donation after the quality-based date.
- Promote consumer education and awareness on the meaning of date labels and their application to donated food.

To ensure that liability concerns related to donating food do not deter potential donors, the government should:

- Adopt legislation that establishes clear and comprehensive 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.

To ensure that food donors and food recovery organizations are sufficiently incentivized to engage in food donation, the government should:

- Increase the tax deduction available for food donations and activities associated with the storage, transportation, and delivery of donated food.
- Offer tax credits for donations made to food recovery organizations and other intermediaries that distribute donated food to food -insecure populations.
- Adjust the value-added tax so that it does not pose a potential barrier to donation.

To ensure that all food supply chain actors contribute to food recovery and donation efforts, the government should:

- Adopt policies that would require the donation of surplus food or that would impose monetary penalties for food that is sent to landfills when it is still suitable for human consumption.

INTRODUCTION

Policies designed to both prevent food loss and waste and promote food donation are critical for countries responding to simultaneous burdens of poverty, malnutrition, and food insecurity. This is the case in Costa Rica, which continues to battle widespread inequality and rising food insecurity despite consistent economic expansion over the past 25 years.⁴ Approximately 21% of the Costa Rican population lives in poverty, with an additional 5.7% living in extreme poverty.⁵ Between 2017 and 2019, more than 25% of the population was moderately or severely food insecure, a steady increase from years prior.⁶ Such conditions have only worsened since the outbreak of the COVID-19 pandemic, which has destabilized the economy and disrupted food systems throughout Costa Rica.⁷ The Costa Rican government has adopted several measures to respond to this crisis, including agreements with international financial institutions for temporary external funding support.⁸

These emergency response measures align with Costa Rica's long-standing efforts to improve food security and food system sustainability. In recent years the government has adopted broad-sweeping policy initiatives on these issues, including the National Policy on Food and Nutritional Security 2011-2021 (*Política Nacional de Seguridad Alimentaria y Nutricional 2011-2021*), which aims to advance population health and food security through a rights-based, equity lens;⁹ and the National Policy of Sustainable Production and Consumption 2018-2030 (*Política Nacional de Producción y Consumo Sostenible 2018-2030*), which delineates strategies for reducing and appropriately managing food waste, among other goals.¹⁰ Created by the government in 2014, the Costa Rican Network for the Reduction of Food Loss and Waste (*Red Costarricense para la Disminución de Pérdidas y Desperdicio de Alimentos*) conducts fact-finding missions, raises awareness, and promotes potential strategies to reduce food loss and waste throughout the country.¹¹

Recognizing the potential for food recovery and donation to not only reduce food waste but also mitigate food insecurity and hunger is essential to Costa Rica's greater policy goals. The Food Bank of Costa Rica (*Banco de Alimentos de Costa Rica* or ABACOR), for example, is a member of the Network and has long advocated for a multifaceted solution to these issues. Each month ABACOR recovers more than 259 tons of safe, surplus food and basic necessities and then redistributes these goods to more than 41,000 beneficiaries with the help of local community organizations.¹² While this impact is significant, ensuring that Costa Rica's relevant legal frameworks do not pose unnecessary roadblocks to greater food recovery and donation will ultimately enhance strategies to reduce hunger and food loss and waste.

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 Costa Rica Legal Guide, and offer policy recommendations to address these challenges.

LEGAL CHALLENGES AND POLICY RECOMMENDATIONS

Food Safety for Donations

Issue Overview

A key barrier to food donation in many countries is the lack of knowledge or readily available guidance regarding safety procedures for food donation. Potential donors 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 sent to landfills. In Costa Rica this uncertainty results from the existence of a fragmented food safety framework that food donors and food recovery organizations report as confusing and onerous to follow in the context of food donation.¹³

Food safety in Costa Rica is governed under national General Health Law, which prohibits the sale and free distribution or transfer of altered, deteriorated, contaminated, adulterated, or falsified foods.¹⁴ Since most donated food is offered free of charge to beneficiaries, this prohibition presumably applies to food donors and food recovery organizations. However, the General Health Law does not explicitly reference food donation or feature a donation-specific section. Instead, the General Health Law broadly requires all “food establishments” (i.e., all locations, including both permanent and seasonal premises, at which food is made, handled, kept, traded, or distributed to the public) to meet sanitary conditions relevant to each type of action or operation.¹⁵ The General Health Law does not elaborate on the specific sanitary conditions relevant to food donors or food recovery organizations during the process of donating food or distributing donated food.

Most food donors and food recovery organizations likely fall within the scope of “food establishments” subject to the General Health Law and the Ministry of Health’s (*Ministerio de Salud*) regulatory authority.¹⁶ Pursuant to this authority, the Ministry of Health has issued several regulations that elaborate on the General Health Law’s provision and has endorsed several Central American Technical Regulations (*Reglamentos Técnicos Centroamericanos*) that relate to food safety.¹⁷ Notably, none of these Central American Technical Regulations establish specific food safety standards for donated foods, and the Ministry of Health has not adopted a binding regulation to that effect.

Following the outbreak of the COVID-19 pandemic, the Ministry of Health did publish temporary guidance that features specific food safety standards for food donors and food recovery organizations.¹⁸ For example, the General Guidelines for the Donation of Food in Light of the COVID-19 Health Alert (*Lineamientos Generales para la Donación de Alimentos ante la Alerta Sanitaria por COVID-19* or COVID-19 Food Donation Guidelines) enumerate specific food safety requirements for food recovery organizations serving as donation “collection centers” that directly address the safe receipt, storage, and distribution of donated food.¹⁹ At the time of this writing, it was not clear whether these Guidelines would remain in effect after the COVID-19 pandemic.

Without a permanent and clear delineation of the food safety rules that apply during donation, food donors and food recovery organizations cite uncertainty and confusion with the existing regulatory regime. As a result, supply chain actors may refrain from donating food that is still safe for human consumption.

Recommended Policy Actions

1.

AMEND THE NATIONAL FOOD SAFETY REGULATORY FRAMEWORK TO EXPLICITLY STATE WHICH FOOD SAFETY PROVISIONS APPLY TO FOOD DONORS AND DONATION-RECEIVING ENTITIES.

To resolve uncertainty regarding which food safety provisions apply to donated food, Costa Rica should update the regulations under the General Health Law to include a donation-specific framework. Specifically, the Ministry of Health should adopt a ministerial decree or resolution that enumerates a distinct set of safety standards that apply in a donation rather than a commercial context. This new regulatory instrument should elaborate on the General Health Law, providing specific sanitary rules that apply to donation operations, and should cross-reference any other relevant regulations within the national food safety framework. This may include the Central American Technical Regulations that relate to food safety and that Costa Rica has endorsed through administration action.

The Ministry of Health could further use this regulatory instrument to formalize the food safety standards set forth in the COVID-19 Food Donation Guidelines.²⁰ As mentioned above, these Guidelines enumerate specific food safety requirements for how food recovery organizations, as official “collection centers,” should receive, store, and distribute food donations in accordance with national standards and the Central American Technical Regulations. As these Guidelines were adopted to help facilitate donations during the pandemic, the food safety standards likely reflect minimum requirements to protect public health while still allowing for the greatest food recovery and donation.

2.

PRODUCE AND DISSEMINATE PERMANENT GUIDANCE TO CLARIFY WHICH FOOD SAFETY REQUIREMENTS APPLY TO DONATED FOOD.

Clear guidance from food safety enforcement agencies on which requirements apply to donated food often helps ease the concerns of food donors and food recovery organizations. Costa Rica has adopted such guidance for the duration of the COVID-19 pandemic;²¹ however, the Ministry of Health has not published permanent guidance for relevant actors in nonemergency situations. Drafting clear and tailored guidance on which sanitary requirements apply to donated food would better enable food donors and food recovery organizations to comply with relevant food safety regulations and the General Health Law. The Costa Rican Network for the Reduction of Food Loss and Waste could support the dissemination of this guidance and reinforce food donation as a safe practice for food donors.²² Raising awareness of food safety parameters for food donation falls within the scope of the Network's activities and furthers its goal of promoting strategies to reduce food loss and waste.²³

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” on 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 illnesses over time. Cautious donors and food recovery organizations, however, may discard food after the date 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, researchers found that consumers discard about 22% of food that they could have eaten due to confusion over date labeling.²⁴ Similarly, 84% of Americans report throwing away food after the “expiration date” due to safety concerns even if there is minimal risk of a foodborne illness at that time.²⁵ 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.

Although comparable statistics for Costa Rica were not available at the time of this writing, communications with stakeholders confirmed that existing date label requirements pose a barrier to greater food donation.²⁶ Costa Rica's national date labeling scheme adheres to the Central American Technical Regulation for the General Labeling of Prepackaged Foods (*Reglamento Técnico Centroamericano, RTCA 67.01.02:10, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados)*).²⁷ This Technical Regulation is intended to harmonize standards under the Central American Economic Integration System and is designed to conform with the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods (Codex Stan 1-1985) (Rev. 1-1991 and as amended at its 23rd, 24th, 26th, and 28th sessions 1999, 2001, 2003, and 2005).²⁸ Consistent with the former *Codex Alimentarius* General Standard, the Technical Regulation requires that most prepackaged foods feature an “expiration date” (“*fecha de vencimiento o caducidad*”).²⁹

Unfortunately, the Technical Regulation does not align with the 2018 update to the *Codex Alimentarius* General Standard that sets forth a widely endorsed dual date labeling scheme.³⁰ Under this dual date labeling scheme, the “expiration date” is designated as a safety-based date, affixed only to foods that pose an increased risk of health over time.³¹ All other foods may feature a quality-based label such as “best before.”³² The Technical Regulation, however, defines the “expiration date” as the last date on which manufacturers guarantee that the product's *quality* will be of that normally expected by consumers, as long as it has been stored according to the indicated conditions (emphasis added).³³ In other words, Costa Rica uses the “expiration date” to convey a product's peak quality.

While the Technical Regulation is silent on whether this date impacts food for donation, the COVID-19 Food Donation Guidelines expressly permit the donation and consumption of certain past-date foods. Specifically, the Guidelines set specific time periods during which various types of food may be safely donated and consumed once the “expiration date” has passed.³⁴ While this clear permission to donate and consume food after the “expiration date” may help increase food donations during the pandemic, it also confirms that the “expiration date” is used to convey quality rather than safety in Costa Rica, contrary to the *Codex Alimentarius* General Standard. This application may ultimately lead to unnecessary food waste, as food donors may presume that past-date food is no longer safe to consume or donate.

Recommended Policy Actions

1.

COORDINATE WITH THE SECRETARIAT FOR CENTRAL AMERICAN ECONOMIC INTEGRATION (SIECA) TO INTRODUCE A STANDARDIZED DUAL DATE LABELING SCHEME IN THE CENTRAL AMERICAN TECHNICAL REGULATION ON GENERAL LABELING FOR PREPACKAGED FOODS.

To reduce unnecessary food waste of past-date food that is still safe for donation and consumption, Costa Rica should call for the integration of a dual date labeling scheme in the Technical Regulation. Specifically, the Technical Regulation should redefine the “expiration date” as a safety-based label that may be affixed to foods only if the food safety risk increases over time; a “best before” label may be used to convey peak quality. Such a scheme would realign the Technical Regulation with the latest update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods.

Many other countries and the food industry are moving toward this dual date labeling scheme as a way to reduce unnecessary food waste. For example, the European Union requires manufacturers to select only one of two standard labels: “best before” is required for foods where the label indicates quality while “use by” or “expiration date” is required if the food safety risk increases after the date.³⁵ Several EU Member States have also issued guidance clarifying the impact of these dates on food donation and others have introduced legislation that explicitly allows for donation after the “best before” date (but not after the “use by” date).³⁶ The Consumer Goods Forum, a global network of 400 consumer goods companies across 70 countries, has also called for a standardized dual date labeling system with separate quality and safety date label phrases.³⁷

To introduce this dual date labeling scheme into the SIECA instrument, Costa Rica’s Ministry of Foreign Trade (*Ministerio de Comercio Exterior Costa Rica* or COMEX) should coordinate with the Subgroup of Standardized Measures for the Central American Region (*Subgrupo de Medidas de Normalización de la Región Centroamericana*), which adopted the Central American Technical Regulation on General Labeling of Prepackaged Foods.³⁸ The Council of Ministers for Economic Integration (*Consejo de Ministros de Integración Económica* or COMIECO), which is responsible for approving the frameworks for new and revised Central American Technical Regulations, must ultimately agree to the proposed amendment.³⁹ COMIECO regularly updates and introduces new SIECA frameworks, so such approval is not unprecedented.⁴⁰

In addition to coordinating with the other members of COMIECO to amend the Central American regional framework for date labeling, the Costa Rican government should ensure that a dual date labeling scheme is implemented at the national level. If the Technical Regulation is revised, Costa Rica would need to adopt the amended regime through a government directive. According to standard practice, this would likely be done through a Resolution jointly adopted by the President; the Ministry of Foreign Trade; the Minister of the Economy, Industry and Trade; the Ministry of Agriculture; and the Ministry of Health.

2.

ADOPT A NATIONAL DUAL DATE LABELING SCHEME TO CLEARLY DISTINGUISH BETWEEN SAFETY-BASED AND QUALITY-BASED LABELS AND PERMIT THE DONATION OF FOODS AFTER THE QUALITY-BASED DATE.

In addition to adopting an amended version of the Technical Regulation per the recommendation above, Costa Rica could also enact a new regulation under the General Health Law that clearly details the dual date labeling scheme. The Ministry of Health should adopt such a regulation consistent with the labeling scheme set forth in the *Codex Alimentarius*. The regulation should specify the “expiration date” as the last date on which the product should be sold or consumed due to “safety and quality reasons” and permit manufacturers to affix this label only to foods that pose an increased health risk after that date.⁴¹ For all other foods, Costa Rica should permit manufacturers to affix a quality-based date such as “best before.”⁴² The Ministry of Health could refer to the COVID-19 Food Donation Guidelines to determine which foods require a safety-based date and which may feature a quality-based date. The Ministry of Health should further clarify that food may be donated after the quality-based date, provided it is still suitable for human consumption. This action would not only encourage food donations, but it would also reduce unnecessary waste of safe, surplus packaged foods.

3.

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

Given the evidence of confusion about Costa Rica’s date labeling scheme, national consumer education is necessary to clarify the existing system and to explain any future changes. If Costa Rica adopts a dual date labeling scheme, for example, education and awareness campaigns may help inform donors, food recovery organizations, and consumers that the “expiration date” is actually intended to indicate safety rather than quality. If the Technical Regulation is not updated to align with the most recent version of the *Codex Alimentarius*, and if Costa Rica does not independently adopt a dual date labeling scheme, then an education campaign should clarify that past-date foods may still be safe for donation and consumption, as reflected in the COVID-19 Food Donation Guidelines.

Liability Protection for Food Donation

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 Argentina and the United States, have established protections for both food donors and food recovery organizations. These protections limit the likelihood that these actors will be held legally or financially responsible for any resulting harm, provided they act in accordance with relevant laws.⁴³ In Costa Rica, however, national law does not provide comprehensive legal protections for food donors and food recovery organizations. Stakeholders in Costa Rica that helped inform these recommendations confirmed that the lack of such protections may deter greater food recovery and donation.⁴⁴

Concern about potential liability among food donors and food recovery organizations in Costa Rica is largely due to uncertainty of risk. Costa Rica’s liability framework is silent on the issue of donation, leaving open for interpretation whether food donors and food recovery organizations may be held liable in the event a beneficiary alleges harm. The Civil Code, for example, building upon the constitutional guarantee of redress for injury,⁴⁵ states that “anyone who by fraud, fault, negligence, or recklessness, causes harm to another is obligated to remedy the harm, together with [any] damages.”⁴⁶ Under this broad standard, food donors and food recovery organizations that act in bad faith, recklessly, or negligently when distributing food that is not fit for consumption could be subject to civil lawsuits.

Similarly, under the Consumer Defense Law (*Ley de Promoción de la Competencia y Defensa Efectiva del Consumidor* or CDL) food donors and food recovery organizations may constitute “suppliers” that owe a duty of care to donation beneficiaries, even if the donated food is offered free of charge.⁴⁷ If a consumer is harmed through the consumption or use of a good or service, the consumer can bring both administrative and civil law claims against the producers and suppliers of the good or service.⁴⁸ Based on this standard, food donors and food recovery organizations could face liability under the CDL if the donated food does not adhere to applicable sanitary standards among other relevant laws.

The General Health Law further recognizes joint and several liabilities for any individual who is responsible for ensuring that food provided to the public meets the applicable food safety standards. This means that owners or administrators of food donation organizations, which are included in the definition of “food establishments” under the General Health Law, could face liability for legal claims alleging food safety violations.⁴⁹

While beneficiaries are generally not bringing lawsuits against food donors and food recovery organizations under these frameworks, the lack of protections may deter food donors and other actors that perceive food donation as a potentially risky endeavor. In 2016 the Costa Rica Legislative Assembly sought to introduce civil and criminal liability protections for donation-receiving entities, but not for food donors, under the General Health Law—an initiative that would have helped dispel the perception of risk.⁵⁰ However, this proposal had not moved forward at the time of this writing. As a result, food donors and food recovery organizations continue to donate and distribute foods without comprehensive protections.

Recommended Policy Actions

1.

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

Costa Rica should enact national liability protection that extends to both food donors and food recovery organizations. This protection could draw from the protections set forth in Argentina’s Food Donation Law,⁵¹ which affords both donors and food recovery organizations a presumption of good faith (*buena fe*) absent a showing of willful misconduct or negligence resulting in harm to a beneficiary.⁵² Costa Rica could introduce similar protections through new legislation that focuses on food loss and waste prevention or the promotion of food recovery and donation. Alternatively, Costa Rica could seek to amend the General Health Law and its regulatory framework to include these comprehensive protections, similar to the 2016 proposal.

This protection should ultimately help promote the integrity and safety of food donation operations while also promoting food donation as a feasible alternative to throwing away food. In other words, the protection should reinforce the best practices identified in this document (e.g., the protection should extend only to food donors and food recovery organizations that adhere to relevant food safety standards and to the donation of past-date food, provided the date refers to quality rather than safety).

2.

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

In designing liability protections for food donors and food recovery organizations, Costa Rica could expand the scope of protections beyond the limits set in Argentina. Specifically, Costa Rica could extend protections to intermediaries that charge a small fee for donated food—an action that falls outside the scope of protection under Argentina’s Food Donation Law.⁵³ This restriction is known as a “no charge” requirement (i.e., food donors and food donation intermediaries lose liability protection if they charge final recipients even a small or

nominal fee for the donated food). This “no charge” restriction ultimately hinders food recovery efforts, as it eliminates a potential funding source for food recovery organizations that could be used to support operations or develop innovative models of food recovery and donation.

Taxes

Issue Overview

Food donation helps 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 offset these expenses and incentivize donation, or they can create an additional barrier, contributing to greater food loss and waste. 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. While Costa Rica offers a tax benefit to incentivize donation, it falls short of positioning food donation as an economical alternative to throwing away food.

Under Costa Rica’s Income Tax Law, charitable donations are exempted from gross income calculations for tax purposes, up to a limit of 10% of the taxpayer’s net income (the calculation of which should not include the donation).⁵⁴ For in-kind donations, the monetary value of the donation is determined based on its fair market value.⁵⁵ Taxpayers may claim these benefits for donations made to qualifying organizations, which includes the Costa Rican Red Cross as well as social welfare, scientific, and cultural associations and foundations.⁵⁶ Food recovery organizations such as food banks fall within this classification but are not explicitly named in the Income Tax Law. As a result, taxpayers may claim this deduction for donated food but are not eligible for other benefits such as tax credits under Costa Rican law.

Costa Rica’s value-added tax scheme (VAT) may also pose a potential barrier to greater food donation. The VAT is levied at a standard rate of 13% on the sale of goods at each stage of the supply chain, from production to the point of sale, whenever value is added.⁵⁷ The “sale of goods” is defined broadly to include the transfer of goods without consideration, i.e. payment,⁵⁸ and thus includes food that is donated, free of charge. A recently adopted Executive Decree significantly reduced the VAT rate on basic food products to only one percent;⁵⁹ however, the attachment of the tax on donated foods may still create a financial burden on food donors and donation-receiving entities.

Recommended Policy Actions

1. INCREASE THE TAX DEDUCTION AVAILABLE FOR FOOD DONATIONS AND ACTIVITIES ASSOCIATED WITH THE STORAGE, TRANSPORTATION, AND DELIVERY OF DONATED FOOD.

Although Costa Rica offers a limited tax deduction for qualifying food donations, the 10% cap is too restrictive to effectively incentivize donations. To ensure that donors perceive food donation as an economical alternative to throwing away food, the government should amend the Income Tax Law to offer more competitive benefits for food donation. Specifically, Congress should raise the 10% deduction cap, and allow donors to recover the costs of transportation, storage, and other associated expenses.⁶⁰ This amendment would be consistent with previous iterations of the law, and which did not impose a deduction limit.⁶¹

Tax schemes in other countries may offer models for this change. In Chile, for example, a 2020 tax reform clarified that companies engage in manufacturing, importing, or selling food may deduct the total value of the donated food, provided the food has lost commercial value and is still safe for consumption.⁶² In the United States, food donors may claim an “enhanced tax deduction” of up to 15% of their taxable income for qualifying

food donations.⁶³ This deduction also allows donating businesses to deduct the lesser of (a) twice the basis value of the donated food or (b) the basis value of the donated food plus one-half of the food's expected profit margin (if the food were to be sold at fair market value).⁶⁴ Offering more substantial benefits such as these may help Costa Rica position food donation as a competitive alternative to simply throwing away food. Such tax reform may also help restart Costa Rica's economy in the wake of the COVID-19 pandemic.

2.

OFFER TAX CREDITS FOR DONATIONS MADE TO FOOD RECOVERY ORGANIZATIONS AND OTHER INTERMEDIARIES THAT DISTRIBUTE DONATED FOOD TO FOOD-INSECURE POPULATIONS.

Costa Rica should also amend its Income Tax Law to include tax credits for qualifying food donations. Local producers in Costa Rica may not generate enough net taxable profit to benefit from a tax deduction or offset the associated expenses of on-farm recovery and donation. 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. Tax credits are also applied evenly across tax brackets and would therefore have a greater impact for small, low-revenue businesses than a tax deduction.

3.

ADJUST THE VALUE-ADDED TAX SO THAT IT DOES NOT POSE A POTENTIAL BARRIER TO DONATION.

In addition to expanding the tax benefits that will further incentivize food donation, Costa Rica should amend its VAT scheme to exempt donated food. In March 2019, Costa Rica temporarily exempted basic food items, which included an expansive list of products such as breads and tortillas, rice, flour, milk, meat, eggs, sausages, canned tuna, fruits, vegetables, and beverages, before reinstating the VAT on these items at a rate of just one percent in July 2020.⁶⁵ Costa Rica should issue an updated Executive Decree that permanently exempts these basic food items and other nutritious food products from the tax. Costa Rica's Congress could also amend the VAT Law to exclude free donations from the VAT, distinguishing between donations and the "sale of goods," to which the VAT applies. These measures could help reduce the tax burden on food donors and food recovery organizations.

Donation Requirements or Food Waste Penalties

Issue Overview

Some countries employ food donation requirements or impose monetary penalties for food that is sent to landfills (often known as organic waste bans or waste taxes).⁶⁶ The aim of organic waste bans or taxes is to encourage businesses to adopt strategies that would mitigate food waste and therefore promote more sustainable food systems. For example, Peru's Food Donation Law contains a limited donation requirement ("*obligatoriedad de donación*") that prohibits all food stores and supermarkets from discarding or destroying food that has lost commercial value but is still suitable for human consumption.⁶⁷ At the time of this writing, no applicable legal frameworks required food to be donated in certain circumstances or penalized food waste in Costa Rica, although the government has made other commitments to reduce landfill waste⁶⁸ and to guarantee citizens' right to live in a healthy and ecologically balanced environment.⁶⁹

Recommended Policy Actions

1.

ADOPT POLICIES THAT WOULD REQUIRE THE DONATION OF SURPLUS FOOD OR THAT WOULD IMPOSE MONETARY PENALTIES FOR FOOD THAT IS SENT TO LANDFILLS WHEN IT IS STILL SUITABLE FOR HUMAN CONSUMPTION.

Costa Rica recently adopted a National Policy of Sustainable Production and Consumption 2018-2030 (*Política Nacional de Producción y Consumo Sostenible 2018-2030*)⁷⁰ that delineates seven strategic axes to promote sustainability. These encompass the prioritization of sustainable agrifood systems and sustainable lifestyles, the scope of which includes the reduction and appropriate management of food waste.⁷¹ However, this National Policy does not require the donation of surplus food or impose monetary penalties for food waste. Costa Rica should build on the commitment to sustainable production and consumption that it announced in the National Policy by following the example of other jurisdictions. For example, certain states and municipalities in the United States have enacted laws to require certain businesses to subscribe to organic waste recycling services.⁷²

Costa Rica could consider different policy interventions to require the donation of surplus food. For example, the country could amend its current Comprehensive Waste Management Law (*Ley para la Gestión Integral de Residuos*), which aims to reduce the generation of waste to the greatest extent possible, reuse waste products, and dispose of the lowest quantity of waste possible in an ecologically appropriate manner, among other objectives.⁷³ A revision to the Comprehensive Waste Management Law could specifically target food waste and in doing so introduce sanctions such as fines that could be imposed on actors in the food supply value chain that discard surplus but still safe food.

CONCLUSION

While these policy recommendations are intended to help strengthen food donation in Costa Rica, 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.

ENDNOTES

- ¹ 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.
- ² Karla Pérez González, *En Costa Rica 40% de Alimentos se Desperdicia o Desecha Antes de Ser Consumido*, ELMUNDO.CR (November 23, 2017), <https://www.elmundo.cr/costa-rica/costa-rica-40-alimentos-se-desperdicia-desecha-consumido> (last visited Jan. 7, 2021).
- ³ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *The State of Food Security and Nutrition in the World 2020: Transforming Food Systems for Affordable Healthy Diets* 171 (2020), <http://www.fao.org/3/ca9692en/CA9692EN.pdf>.
- ⁴ See *Costa Rica Overview*, THE WORLD BANK, <https://www.worldbank.org/en/country/costarica/overview> (last visited Nov. 11, 2020).
- ⁵ THE WORLD BANK, COSTA RICA POVERTY & EQUITY BRIEF (Oct. 2020), https://databank.worldbank.org/data/download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/AM2020/Global_POVEQ_CRI.pdf.
- ⁶ FOOD & AGRIC. ORG. OF THE U.N., ET AL., *supra* note 12 at 171. According to the FAO, an estimated 25.5% of the population was moderately or severely food insecure between 2017- and 2019; between 2014 and 2016, approximately 21.8% of the population was moderately or severely food insecure.
- ⁷ See e.g. UNHCR, RAPID NEEDS ASSESSMENT IMPACT OF COVID-19 ON NICARAGUAN POC (Aug. 2020), <https://data2.unhcr.org/en/documents/details/78414>; *Press Release: Costa Rica Receives World Bank Support for Economic Recovery and Promoting Low-Carbon Development*, THE WORLD BANK (June 26, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/25/apoyo-del-banco-mundial-a-costa-rica-para-promover-la-recuperacion-economica-y-un-desarrollo-bajo-en-carbono>; *IMF paves way for new era of austerity post-COVID-19*, OXFAM INTERNATIONAL (Oct. 12, 2020), <https://www.oxfam.org/en/press-releases/imf-paves-way-new-era-austerity-post-covid-19>.
- ⁸ *Press Release: Costa Rica Receives World Bank Support for Economic Recovery and Promoting Low-Carbon Development*, THE WORLD BANK (June 26, 2020), <https://www.worldbank.org/en/news/press-release/2020/06/25/apoyo-del-banco-mundial-a-costa-rica-para-promover-la-recuperacion-economica-y-un-desarrollo-bajo-en-carbono>; *IMF paves way for new era of austerity post-COVID-19*, OXFAM INTERNATIONAL (Oct. 12, 2020), <https://www.oxfam.org/en/press-releases/imf-paves-way-new-era-austerity-post-covid-19>.
- ⁹ MINISTERIO DE SALUD, POLÍTICA NACIONAL DE SEGURIDAD ALIMENTARIA Y NUTRICIONAL 2011-2021, 31 (2011) <https://www.ministeriodesalud.go.cr/index.php/biblioteca-de-archivos/sobre-el-ministerio/politicas-y-planos-en-salud/politicas-en-salud/1106-politica-nacional-de-seguridad-alimentaria-y-nutricional-2011-2021/file>.
- ¹⁰ Política Nacional de Producción y Consumo Sostenible 2018-2030, Decreto Ejecutivo No. 41032-PLAN-MINAE-RE, 3 mayo 2018, GACETA No. 77, http://www.digeca.go.cr/sites/default/files/documentos/politica_nacional_produccion_consumo_sostenibles.pdf [hereinafter “National Policy of Sustainable Production and Consumption”].
- ¹¹ *Red Costarricense para la Disminución de Pérdidas y Desperdicios de Alimentos*, TECNOLÓGICO DE COSTA RICA (last visited Jan. 25, 2021), <https://www.tec.ac.cr/red-costarricense-disminucion-perdidas-desperdicios-alimentos>. The Costa Rica Institute of Technology (*Tecnológico de Costa Rica* or TEC) acts as the coordinator of the Network, while the Food and Agriculture Organization of the United Nations (FAO) serves as the Technical Secretariat. Network members include representatives of the Ministry of Agriculture and Livestock, the Ministry of Environment and Energy, the Costa Rican Institute of Tourism, and the Legislative Assembly; FOOD & AGRIC. ORG. OF THE U.N., FOOD LOSSES AND WASTE IN LATIN AMERICA AND THE CARIBBEAN 16 (2016), <http://www.fao.org/3/a-i5504e.pdf> (last visited Jan. 6, 2021).
- ¹² BANCO DE ALIMENTOS DE COSTA RICA (2020), <https://bancodealimentos.or.cr> (last visited Jan. 6, 2021).
- ¹³ Internal survey conducted by FLPC, Fall 2020.
- ¹⁴ *Id.* art. 200.
- ¹⁵ *Id.* art. 212.
- ¹⁶ General Health Law, art. 199.
- ¹⁷ Reforma Reglamento Orgánico del Ministerio de Salud, N° 41999-S, art. 18, 20 sept. 2019; see, e.g., Publica Resolución N° 276-2011 (COMIECO-LXI): y su anexo: Reglamento Técnico Centroamericano RTCA 67.06.55:09 Buenas Prácticas de Higiene para Alimentos No Procesados y Semiprocesados y su Guía de Verificación, Decreto Ejecutivo 37057 (2012).
- ¹⁸ See *Situación Nacional Covid-19*, MINISTERIO DE SALUD COSTA RICA, <https://www.ministeriodesalud.go.cr/index.php/centro-de-prensa/noticias/741-noticias-2020/1532-lineamientos-nacionales-para-la-vigilancia-de-la-infeccion-por-coronavirus-2019-ncov> (last visited Jan. 25, 2021).
- ¹⁹ *Id.* at 6.
- ²⁰ MINISTERIO DE SALUD DE COSTA RICA, LS-PG-001: LINEAMIENTOS GENERALES PARA LA DONACIÓN DE ALIMENTOS ANTE LA ALERTA SANITARIA POR COVID-19 (April 22, 2020).
- ²¹ COVID-19 Food Donation Guidance.
- ²² FOOD & AGRIC. ORG. OF THE U.N., FOOD LOSSES AND WASTE IN LATIN AMERICA AND THE CARIBBEAN 16 (2016), <http://www.fao.org/3/a-i5504e.pdf> (last visited Jan. 6, 2021).
- ²³ *Id.*
- ²⁴ U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-19-407, DATE LABELS ON PACKAGED FOODS: USDA AND FDA COULD TAKE ADDITIONAL STEPS TO REDUCE CONSUMER CONFUSION (2019), <https://www.gao.gov/assets/710/701238.pdf>.
- ²⁵ HARV. L. SCH. FOOD L. & POL’Y CLINIC & NAT. RESOURCES DEF. COUNCIL, DON’T WASTE, DONATE: ENHANCING FOOD DONATIONS THROUGH FEDERAL POLICY, 19 (2017), <https://www.nrdc.org/sites/default/files/dont-waste-donate-report.pdf>.
- ²⁶ FLPC survey of stakeholders in Costa Rica, conducted Fall 2020.
- ²⁷ Reglamento Técnico Centroamericano, Etiquetado General de los Alimentos Previamente Envasados (Preenvasados), RTCA 67.01.02:10, 14 junio 2018, <http://web-sieca.s3.amazonaws.com/actos%20administrativos/resoluciones/comieco/280-2012ANEXO.pdf>. [hereinafter “RTCA on Labeling”].
- ²⁸ *Id.*
- ²⁹ *Id.* art. 5.8.1, 5.8.2. The regulation allows for a variety of phrases and abbreviations to be used on date labels, including “expiration date (“*fecha de vencimiento*”),” “consume before... (“*consumir antes de...*”),” “expiry date (“*fecha de caducidad*”),” “expires on... (“*expira el...*”),” among others.
- ³⁰ See FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985, 2 (Rev. 2018), http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf. The 2018 update to the *Codex Alimentarius* General Standard for the Labeling of Prepackaged Foods designates the “expiration date” as a safety-based label that may be affixed only to foods that pose an increased health risk once the date has passed. For all other food items, the *Codex Alimentarius* suggests that manufacturers affix a “best before” date to indicate peak quality.
- ³¹ *Id.*
- ³² *Id.*

33 RCTA on Labeling, art. 5.8.
34 *Id.*
35 Commission Regulation No. 1169/2011, 2011 O.J. (L 304) 18 (EC).
36 See EUROPEAN COMMISSION, MARKET STUDY ON DATE MARKING AND OTHER INFORMATION PROVIDED ON FOOD LABELS AND FOOD WASTE PREVENTION: FINAL REPORT
(2018), https://ec.europa.eu/food/sites/food/files/safety/docs/fw_lib_srp_date-marking.pdf.
37 *Release: Companies Commit to Simplify Food Date Labels Worldwide by 2020, Reducing Food Waste*, WRI (Sept. 20, 2017), [https://www.wri.org/news/2017/09/
release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste](https://www.wri.org/news/2017/09/release-companies-commit-simplify-food-date-labels-worldwide-2020-reducing-food-waste).
38 See RCTA on Labeling.
39 See RCTA on Labeling.
40 *Technical Regulations: Under Discussion*, SIECA, [https://www.sieca.int/index.php/economic-integration/economic-integration/free-trade/technical-
regulations/?lang=en](https://www.sieca.int/index.php/economic-integration/economic-integration/free-trade/technical-regulations/?lang=en) (last visited Jan. 12, 2021).
41 See FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985, 2 (Rev. 2018),
http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.
42 See FAO and WHO, CODEX ALIMENTARIUS INTERNATIONAL FOOD STANDARDS: GENERAL STANDARD FOR THE LABELING OF PREPACKAGED FOODS, CXS 1-1985, 2 (Rev. 2018),
http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fstandards%252FCXS%2B1-1985%252FCXS_001e.pdf.
43 See The Bill Emerson Good Samaritan Food Donation Act, 42 U.S.C.A. § 1791(c)(1) [United States]; Law 25989, Dec. 16, 2004 [30564] B.O. 1 [Argentina].
44 Respondents to an FLPC survey identified the issue of potential legal or financial liability as a real or perceived barrier to food donation in the country.
45 CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA [C.P.], art. XLI.
46 Civil Code, Ch. V, Title II, Article 1045.
47 *Id.*
48 *Id.* art. 46.
49 LEY GENERAL DE SALUD, Ley 5395, Article 219 (passed 1973, last amended April 2018).
50 Asamblea Legislativa de la República de Costa Rica, Proyecto de ley: Adición de los Artículo 196-bis, 196-ter y 196-quáter de la Ley General de Salud N.º 5395, 30
octubre 1978 (y sus Reformas): “Compartamos la Mesa.” Expediente N.º 29.207, Article 196 Ter. (2016), <http://www.aselex.cr/boletines/Proyecto-20207.pdf>.
51 Law 25989, Dec. 16, 2004, [30564] B.O. 1 [Argentina], <http://servicios.infoleg.gob.ar/infolegInternet/anexos/100000-104999/102664/texact.htm> [https://perma.
cc/ED5J-EE4H] amended via the National Plan for Food Loss and Waste (Law No. 27454).
52 *Id.*
53 *Id.* Argentina’s liability protections apply only to donations that are made for free, to a qualified intermediary, and that benefit populations in need.
54 Ley del Impuesto sobre la Renta, Ley N.º 7092, 21 abril 1988 [hereinafter “Income Tax Law.”]. *Id.* arts. 6(g), 8(q). The calculation of gross income does not include
the value of the donation.
55 *Id.* art. 8(q).
56 *Id.*
57 Ley de Impuesto al Valor Agregado (IVA), Ley N.º 6826, art 1., Versión de la norma: 19 noviembre 2020 [hereinafter “VAT Law”].
58 *Id.* art. 2.
59 Executive Decree no. 41615-MEIC-H (18 March 2019)
60 *Id.*
61 See Income Tax Law prior to 2018 reform.
62 Chile modernized its Income Tax Law via Ley No. 21.210, Moderniza La Legislación Tributaria, art. 31, Feb. 24, 2020 DIARIO OFICIAL [D.O.] (Chile).
63 See I.R.C. § 170(e)(3)(C)(ii) (United States)
64 See I.R.C. § 170(e)(3)(B); 26 C.F.R. § 1.170A-4A(b)(4) (United States).
65 Executive Decree no. 41615-MEIC-H (18 March 2019)
66 For instance, certain states and municipalities in the United States have enacted laws to require certain businesses to subscribe to organic waste recycling
services. BANS AND BEYOND: DESIGNING AND IMPLEMENTING ORGANIC WASTE BANS AND MANDATORY ORGANICS RECYCLING LAWS, HARVARD LAW SCHOOL FOOD LAW AND
POLICY CLINIC & CENTER FOR ECOTECHNOLOGY (July 2019), https://www.chlpi.org/wp-content/uploads/2013/12/Organic-Waste-Bans_FINAL-compressed.pdf (last
visited Jan. 7, 2021).
67 LEY QUE PROMUEVE LA DONACIÓN DE ALIMENTOS Y FACILITA EL TRANSPORTE DE DONACIONES EN SITUACIONES DE DESASTRES NATURALES, LEY N.º 30498, Disposición
Complementaria Final Quinta (2016).
68 See ESTRATEGIA NACIONAL DE SEPARACIÓN, RECUPERACIÓN Y VALORIZACIÓN DE RESIDUOS (2016-2021) (April 2016), [https://www.ministeriodosalud.go.cr/index.php/
biblioteca-de-archivos/sobre-el-ministerio/politicas-y-planes-en-salud/estrategias/3026-estrategia-nacional-de-reciclaje-2016-2021/file](https://www.ministeriodosalud.go.cr/index.php/biblioteca-de-archivos/sobre-el-ministerio/politicas-y-planes-en-salud/estrategias/3026-estrategia-nacional-de-reciclaje-2016-2021/file) (last visited Jan. 7, 2021).
69 CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE COSTA RICA, Article 50 (1949) (Costa Rican Constitution).
70 POLÍTICA NACIONAL DE PRODUCCIÓN Y CONSUMO SOSTENIBLE 2018-2030, DECRETO EJECUTIVO 41032 (2018).
71 *Id.* Section 7.3.6.
72 HARV. L. SCH. FOOD L. & POL’Y CLINIC & CTR. FOR ECOTECHNOLOGY, BANS AND BEYOND: DESIGNING AND IMPLEMENTING ORGANIC WASTE BANS AND MANDATORY
ORGANICS RECYCLING LAWS (2019), https://www.chlpi.org/wp-content/uploads/2013/12/Organic-Waste-Bans_FINAL-compressed.pdf.
73 Ley para la Gestión Integral de Residuos, art. 4 (2010).

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