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## The 2022 Global Philanthropy Environment Index Costa Rica

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### QUICK FACTS

**Legal forms of philanthropic organizations included in the law:** Association, Cooperative, Foundation

**Five main social issues addressed by these organizations:** Basic Needs, Early Childhood Education through High School, Environment, Housing and Economic Development, Prevention of Violence

**Average time established by law to register a philanthropic organization:** N/A

**Average cost for registering a philanthropic organization:** USD 500–1,500

**Government levels primarily regulating the incorporation of philanthropic organizations:** Central/Federal Government, Local Government

Foundations need to appoint a representative of the county, where they are located as one of their board members to be able to register their board and to start operating as a legal entity.

### Philanthropic Environment Scores:

Year	Ease of Operating a PO	Tax Incentives	Cross-Border Philanthropic Flows	Political Environment	Economic Environment	Socio-Cultural Environment	Overall Score
2022 GPEI	3.83	3.50	3.00	4.00	3.00	3.50	3.47

Source: Indiana University Lilly Family School of Philanthropy, 2022 *Global Philanthropy Environment Index*

## Key Findings

### I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

*The three indicator questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration; (B) operations; and (C) dissolution.*

Question One: To what extent can individuals form and incorporate the organizations defined?

<b>Score: 3.5</b>
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Individuals are free to form organizations and the law is permissive regarding who may serve as a founder, although some restrictions apply depending on the type of entity; for example, associations and cooperatives must be founded by individuals. Organizations are free to any legal purpose, provided the purpose is consistent with the nature of the organization. For example, foundations and associations must have nonprofit purposes. The law does not establish a minimum amount of capital or assets required to form a philanthropic organization (PO) and the registration fees are set at a reasonable level. However, the incorporation process requires legal counsel and the notarization of documents, and therefore legal fees should be taken into consideration. The government provides free council for the registration process of cooperatives, but the involvement of a lawyer or a public notary is still required.

There is no general legislation for POs and each type of organization is regulated through a specific law. The government body in charge of processing the registration of cooperatives is different from the government body in charge of processing the registration of other POs. In the case of associations and foundations, although a list of information and documentation required for its incorporation is available, the government body in charge of the processing the registration is inconsistent in its criteria for accepting or denying it, has broad discretion on whether the purpose of the organization is consistent with its nature, and sometimes does not comply with times and other guidelines established by law for revising the registration documents, making the process long, onerous, and bureaucratic.

Question Two: To what extent are POs free to operate without excessive government interference?

<b>Score: 4.0</b>
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Organizations are somewhat inhibited in their internal governance, due to governance provisions established by law regarding minimum governance bodies and matters that are competence of each body but are mostly free to establish their own governance rules. Foundations have the stricter governance rules established in the Law on Foundations (*Ley de Fundaciones*) than other types of POs. For example, they can only have a three or five member board, and are required to appoint as members of the board a representative from the municipality and a representative from the executive branch. In addition, the type of power of attorney that the president (legal representative of the foundation) can hold is limited and therefore additional appointments must be made by the foundation for it to have a legal representative with a full and unlimited power of attorney.

Regarding their activities and purpose, organizations have few legal impediments, provided that the activities being carried out by the organization are consistent with the nature of the PO and its bylaws and that any legal requirements applicable for carrying out a specific activity are met, such as having different permits or licenses. Moreover, POs are free to communicate through various media channels and are generally not restricted in their cooperation with domestic or foreign entities, although restrictions may apply depending on the type of entity. Cooperatives cannot execute agreements with third parties pursuant to which such third parties receive a percentage of the cooperative's surpluses. POs are required to comply with tax reporting, as are all other types of organizations. Reporting requirements applicable specifically to each type of entity are somewhat unclear. Particularly, in the case of associations declared to be of "public utility" and foundations, the law establishes the obligation to provide an annual report to the Ministry of Justice and Peace, but the content of such report is not detailed.

Question Three: To what extent is there government discretion in shutting down POs?

<b>Score: 4.0</b>
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The governing bodies of POs are generally allowed to decide the voluntary termination of the organization. However, in the case of associations and foundations, the decision to dissolve the organization must be approved by a judge and the process for getting such approval is not clear under current legislation. In practice, the voluntary dissolution of associations and foundations is uncommon due to the process not being clear. Therefore, when the members of an association or a foundation want to terminate the activities of the organization, it is common that association or foundation is left abandoned and is not properly dissolved. The laws that regulate cooperatives, foundations, and associations establish violations under which the organization can be involuntarily terminated. For example, in the case of cooperatives and associations, a minimum number of members are required and if such number is not met at some point, the organization may be involuntarily terminated. Not all the violations, that according to the corresponding laws are cause for involuntary termination, can be considered severe. In practice, the involuntary termination of a PO is highly uncommon, and the process is not clear.

## II. Domestic Tax and Fiscal Issues

*The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.*

Question Four: To what extent is the tax system favorable to making charitable donations?

<b>Score: 4.0</b>
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Both individuals and corporations have access to income tax deductions when making charitable donations or granting charitable gifts, provided however that such donations or charitable gifts are made to foundations or associations that have been authorized by the tax authorities to receive tax-deductible donations and that the contribution is duly supported by the corresponding documentation. Credits are not granted to individuals or corporations for making charitable donations or granting charitable gifts.

The tax-deductible amount for donations and charitable gifts in any given fiscal year cannot exceed 10 percent of the donor's net income, excluding the amount of the donation or charitable gift. The requirements individuals and corporations must meet to be able to apply the deduction are clear, consistent, and reasonable.

Question Five: To what extent is the tax system favorable to POs in receiving charitable donations?

<b>Score: 3.0</b>
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Foundations and associations declared as “public utility organizations” by the executive branch are not subject to income tax, according to Article 3 of the Income Tax Law. However, no other tax benefits are granted to these organizations. Depending on the purposes and activities of the organization, additional tax benefits might be applicable. For example, foundations and associations dedicated to the assistance of abandoned minors, homeless and people in social risk, the recollection and treatment of garbage, the conservation of the environment, and public health are exempted from payment of all national and municipal taxes except import duties. It is not clear if organizations dedicated to these activities are required to be registered at a government body aside from the public registry to be able to apply the generic exemption or if associations dedicated to such activities are required to be declared of public interest.

Foundations are automatically granted income tax-exempt status. Nonetheless, and according to the aforementioned policies, associations must be declared of “public utility” to be considered as not subject to the payment of income tax. The process to be declared of “public utility” is demanding and onerous and in practice, the granting of a “public utility” declaration has become uncommon. To be able to receive tax-deductible (for the donor), donations foundations and associations declared of “public utility,” and be authorized by the tax authorities. The process for getting the corresponding authorization is clear in writing but unpredictable in practice, since the tax authorities have broad discretion on the amount of information and documentation, they can ask the organization to provide to grant the authorization. Cooperatives, on the other hand, are considered as entities not subject to the payment of income tax, are exempt from the payment of property tax, and do not require a tax-exempt status to be able to apply the exemptions.

### III. Cross-Border Philanthropic Flows

*The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.*

Question Six: To what extent is the legal regulatory environment favorable to sending cross-border donations?

<b>Score: 3.0</b>
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Costa Rican legislation does not specifically regulate cross-border donations, therefore the cost and process for making such donations is not clearly defined. Since no specific provisions have been established for cross-border charitable donations made by a Costa Rican and considering that donations (generally speaking) made by a Costa Rican taxpayer to an individual or organization

domiciled abroad are deemed as a Costa Rican source of income under current legislation, charitable donations could be considered as subject to income tax payment on remittances abroad. Furthermore, since the tax deduction benefits are only applicable for charitable donations and charitable gifts made to organizations authorized by the tax authorities to receive tax deductible donations, donations made to an organization domiciled abroad would not be considered as tax deductible for the Costa Rican donor. Lastly, cross-border donations might require reporting processes by banking institutions.

Also, it is important to consider that pursuant to Costa Rican legislation on drug related activities, money laundering, and financing of terrorism, cross-border donations might be subject to reporting processes before banking institutions and/or the regulatory authority of financial entities, especially if such donations are recurrent and for significant amounts. Moreover, according to the indicated legislation, Costa Rican nonprofit organizations that receive funds coming from international jurisdictions that are considered to be “risk” jurisdictions or from organizations with affiliates in such jurisdictions abroad should be subject to reporting obligations before regulatory authority of financial entities. A list of jurisdictions internationally considered to be “risk” jurisdictions is nonexistent, therefore, the application of reporting obligations is not clear.

Due to the lack of regulation and clarity for making cross-border donations, the process, cost, fiscal implications, and reporting duties applicable should be reviewed on a case-by-case basis.

Question Seven: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

<b>Score: 3.0</b>
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Costa Rican legislation does not expressly regulate cross-border donations, except for limited regulation in legislation on drug related activities, money laundering, and financing of terrorism, therefore the cost and process for receiving such donations is not clearly defined. Pursuant to the legislation on drug related activities, money laundering, and financing of terrorism, Costa Rican nonprofit organizations that receive funds coming from international jurisdictions that are considered to be “risk” jurisdictions or from organizations with affiliates in such jurisdictions abroad should be subject to reporting obligations before regulatory authority of financial entities. A list of jurisdictions internationally considered to be “risk” jurisdictions is nonexistent, therefore, the application of reporting obligations is not clear. In practice, the lack of clarity on jurisdictions considered to be “risk” jurisdictions might cause banks to impose constraints on POs to receive any donation from abroad. Due to the lack of regulation and clarity for receiving cross-border donations, the process, cost, fiscal implications, and reporting duties applicable should be reviewed on a case-by-case basis.

There is no express limitation for foreign entities or individuals to be granted the same tax benefits applicable to Costa Rican entities or individuals for making donations or charitable gifts to Costa Rican organizations. However, since the only tax benefits applicable is that such donations or charitable gifts are considered deductible for income tax purposes (provided, that they are made to entities authorized by the tax authorities to receive tax deductible donations and the corresponding supporting documentation is filed), unless the foreign entity or individual making the donation or charitable gift is considered as a Costa Rican taxpayer for income tax purposes, the benefit is useless.

#### IV. Political Environment

*The four indicator questions in the next three sections concern the political context, economic conditions, and socio-cultural characteristics that influence the environment for philanthropy.*

Question Eight: To what extent is the political environment favorable for philanthropy?

<b>Score: 4.0</b>
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Experiences of collaboration between government and the philanthropic sector are not common, not because there is a conflict between the government and the philanthropic sector or because the government does not recognize PO as agents of change, but mainly because POs tend to be apolitical and only big and renowned organizations get involved in advocating and implementing public programs. While collaboration between the government and the philanthropic sector is not so common and the government should incentivize a higher participation of philanthropic organization in policy making and advocating and implementing public programs, Costa Rica is a democratic country, with a transparent and trustworthy electoral system and a high level of political stability that is favorable for the success of philanthropy.

Question Nine: To what extent are public policies and practices favorable for philanthropy?

<b>Score: 4.0</b>
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The government indeed promotes philanthropic values and donors are free to support any philanthropic causes without any pressure from the government. However, government agencies do not have enough capacity to support and oversee the activities of philanthropic organizations.

#### V. Economic Environment

Question Ten: To what extent is the economic context favorable for philanthropy?

<b>Score: 3.0</b>
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In general, Costa Rica can be considered economically stable. However, the country is currently undergoing a fiscal crisis that has pushed the government to negotiate with the International Monetary Fund (IMF) for loans. Furthermore, the pandemic has caused a negative effect in almost all areas of the private sector, especially small and medium enterprises. The country's economic outlook is likely to affect the philanthropic sector, since the general insufficiency of resources in both the public and private sector can be expected to cause a decrease in the funds available for supporting philanthropic causes.



## VI. Socio-Cultural Environment

Question Eleven: To what extent are socio-cultural values and practices favorable for philanthropy?

<b>Score: 3.5</b>
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Solidarity is a strong cultural value in Costa Rica, therefore giving is usually encouraged and there are very few social and cultural restrictions to engage in philanthropic activities. However, there is a general lack of knowledge regarding the functioning of philanthropic organizations, such as the purposes these organizations should have, their obligations, and the benefits that POs have access to. As an example, there is a common misconception that all nonprofit organizations are tax exempt. This combined, with the limited oversight by the government, in some cases leads to poor management of philanthropic organizations, causing a perception that POs do not always function effectively.

## VII. Future of Philanthropy

*These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.*

Current state of the philanthropic sector

Solidarity is a strong cultural value in Costa Rica, therefore giving is usually encouraged and there are very few social and cultural restrictions to engage in philanthropic activities. However, there is a general lack of knowledge regarding the functioning of philanthropic organizations, such as the purposes of these organizations, the obligations these organizations have, and the benefits that POs have access to. For example, there is a common misconception that all nonprofit organizations are tax exempt. These factors, combined with the limited oversight by the government, in some cases leads to poor management of philanthropic organizations, causing a perception that POs do not always function effectively.

The philanthropic sector is in a growing state of development. Both the private and the public sector are interested in the topic, particularly as an instrument to help decrease the socio-economic inequalities currently existing in the country. Nonetheless, the interest of the public sector in growing the development of philanthropy has not resulted in concrete efforts on behalf of the government. Furthermore, even though there is legislation regulating the existence of POs, such legislation is outdated, vague, and inconsistent. oversight and support from government agencies is very limited, which leads to a significant amount of informal and non-institutionalized philanthropy. Private initiatives driven by private groups are currently in motion to incentivize and grow the philanthropic sector, primarily focused on creating awareness of new types of funding instruments and their importance.

Three major recent events affecting the philanthropic landscape between January 2018 and December 2020

1. Fiscal crisis;
2. COVID-19 pandemic; and
3. Desire for local nonprofit organizations to financial sustainability.

Future development trends in the philanthropic landscape

Due to the fiscal crisis and the negative impact of the COVID-19 pandemic, it is likely that no major developments will occur in relation to tax benefits granted to PO and government funding of the philanthropic sector. In fact, it is expected that tax benefits become even more restrictive. Regarding blockchain and crowdfunding, major changes in financial legislation must happen before these emerging forms of philanthropy become a reality in Costa Rica. However, there is openness in the country for implementing new funding tools, and seminars and trainings have been conducted for both the private and public sector about the important role these new funding tools have in the country's economic development. Regarding impact investment and venture philanthropy, there are currently significant regional efforts in Central America in course to establish investment funds as funding instruments for the philanthropic sector.

Three key recommendations to improve the environment for philanthropy

- Legislation on foundations and associations should be revised and amended to make the incorporation and setting up process less onerous, inconsistent, and time consuming. Broader and clearer provisions for the operation of these entities and a defined process for voluntary dissolution should be established;
- Legislation should be issued to regulate the incorporation and operation of companies with purpose and social enterprises, as these entities are not typically considered as POs but rather corporations and limited liability companies. These types of entities are officially recognized as such and have access to certain benefits pursuant to their social and/or environmental impact; and
- Tax benefits for nonprofit organizations should be revised and broadened to incentivize the development of the sector, including granting more tax benefits for nonprofit organizations and expanding the type of entities that have access to such benefits. This should be accompanied by the strengthening of reporting obligations for tax-exempt entities and the government's capacity to oversee the sector, in order to avoid entities taking unlawful advantage of the benefits.

### VIII. Philanthropic Response to COVID-19

*These questions are used to provide a general picture of the philanthropic response to the COVID-19 pandemic in this country and recommendations for improving cross-sectoral collaboration.*

Areas where the nonprofit sector and philanthropy are playing a role in responding to COVID-19

During the pandemic, various initiatives have emerged from the nonprofit and philanthropic sector, as well as informally organized groups, to provide food, toiletries, face masks, and other aids for



covering basic needs to vulnerable groups, mainly in response to the financial impact of COVID-19. Organizations that have promoted these initiatives were already established before the beginning of the pandemic; there is no significant increase in the incorporation of philanthropic organizations as a result of the pandemic. Regarding the treatment of people infected with COVID-19, Costa Rica has a universal health care system, and therefore anyone infected with COVID-19 has access to medical treatment.

Innovation and new trends in the nonprofit sector and philanthropy related to COVID-19 responses

At the time, there was no defined trend in the nonprofit sector and philanthropy in response to the COVID-19 pandemic.

Impact of COVID-19 on the philanthropic environment

COVID-19 has caused a major negative impact to the country's economy, which has worsened the existing fiscal crisis. Regarding the philanthropic sector, these trends have contributed to tax benefits granted to nonprofit organizations becoming more restrictive and public resources to support the philanthropic sector being more limited.

Anticipated impact of COVID-19 on the philanthropic environment in 2021

It is likely that due to the fiscal crisis, worsened by the financial impact of COVID-19, tax benefits granted to nonprofit organizations, as well as the authorizations given to receive tax deductible donations, become even more restrictive. As an example, in January 2021, the tax authorities issued new guidelines for granting the authorization to receive tax deductible donations, making the process stricter.

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