

# SHIFTING THE FOCUS OF FOOD FRAUD: CONFRONTING A HUMAN RIGHTS CHALLENGE TO DELIVER FOOD SECURITY

JADE A LINDLEY\*

## ABSTRACT

*While food fraud is a national issue that must be dealt with by the relevant national authorities, due to the globalised nature of food chains, there may also be an important guiding crime prevention role for the international community that currently lacks. Food fraud undermines food security, and by extension denies human rights, issues that are squarely within the remit of the international legal domain. Food fraud is an organised crime conducted by sophisticated criminal networks who infiltrate global food supply chains by crossing international borders. Often, food fraud is intertwined with and enabled by other organised crimes, such as money laundering, corruption, and document fraud. While there remains an important role for the Food and Agricultural Organization of the United Nations (FAO), among others, in ensuring food is safe for human consumption, presently, there is an absence of international criminal responses. A shift in perspective is needed to enable food fraud to be dealt with alongside other transnational organised crimes under relevant international law. The United Nations Convention on Transnational Organized Crime (CTOC) encompasses activities that relate to, or enable food fraud, albeit no international law specifically mentions food fraud. This article argues that CTOC may be a suitable international legal framework through which appropriate criminal responses to food fraud may be underpinned.*

## I INTRODUCTION

The right to food is recognised in the United Nations' Universal Declaration of Human Rights.<sup>1</sup> Food security<sup>2</sup> is, therefore, a fundamental human right envisaged to ensure access to safe, available, and nutritious food. Identified as a pressing global concern, food security is the core focus of several international bodies, from varying perspectives. Given that food insecurity denies the human right to food, the task to protect it cannot be overstated.

Addressing food security was identified as a Millennium Development Goal in

\* PhD (ANU). Senior Lecturer, UWA Law School. <https://orcid.org/0000-0001-8598-6072>

<sup>1</sup> United Nations Universal Declaration of Human Rights, (signed and entered into force 10 December 1948) ('United Nations Universal Declaration of Human Rights').

<sup>2</sup> The most widely accepted official definition of food security: 'A situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life'. Food and Agriculture Organization of the United Nations (FAO) et al, 'The State of Food Security and Nutrition in the World 2020: Transforming food systems for affordable healthy diets' (Webpage, 2020) <<https://doi.org/10.4060/ca9692en>>, archived at <<https://perma.cc/6C9H-KYGX>>.

2000 and expanded upon in the Sustainable Development Goals (SDGs) of 2015.<sup>3</sup> This inclusion in the SDGs continues the important conversation to globally raise awareness of and address food insecurity. Across several SDGs, there is a push towards food security. In particular, the United Nations Food and Agriculture Organization (FAO) and World Health Organization (WHO), among others, lead many of the international food safety standards and sustainability goals that food security organisations operate within. For example, no poverty; zero hunger; and good health and wellbeing are among the SDGs that directly relate to food security.<sup>4</sup>

Food fraud threatens food security. Estimates suggest that food fraud costs the global food industry approximately US\$49 billion each year with illicit profits comparable to narcotics trafficking with lower risk.<sup>5</sup> Examples of how food fraud is conducted includes food mislabelling; adulterating; misrepresenting country of origin, weight and nutrition; and repackaging. Food fraud involves deliberate and deceitful acts whereby criminals infiltrate food supply chains to gain undue advantage, and less so, cause intentional human harm.<sup>6</sup> Commonly, foods targeted are low to medium cost, high demand everyday foods, such as wine and other alcohol, mineral water, seasoning cubes, seafood, dried herbs and olive oil.<sup>7</sup> These foods are often produced in bulk and particulate form, making criminal infiltration easier to go undetected. Infiltrating global food supply chains for profit fails to protect people and by extension, undermines the fundamental right to food by forcing up prices, affecting sustainable supply, devastating primary industries, and diluting product quality. Often, only the most serious cases causing human harm capture the interest of the authorities and the media. While it is the responsibility of every government to protect its citizens, however when potentially undermining a fundamental human right, the responsibility extends beyond.<sup>8</sup>

The international community has an important part to play in the food fraud conversation. The FAO and WHO lead it from a food safety perspective, while other bodies contribute in various ways. As so many food supply chains transcend borders, the role they play is vital, but there is a lack of consistency in definitions and responses,

<sup>3</sup> United Nations, 'Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1' <[https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)>, archived at <<https://perma.cc/A48K-7H3Q>>.

<sup>4</sup> United Nations, 'The Future We Want: Outcome document of the United Nations Conference on Sustainable Development Rio de Janeiro, Brazil, 20–22 June 2012' (Webpage, 2012) <<https://sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf>>, archived at <<https://perma.cc/ZK9T-WYTW>>.

<sup>5</sup> Clive Williams, 'What do you do for money, honey: The problem with food fraud', *Sydney Morning Herald* (online, Sydney, 20 October 2018) <<https://www.smh.com.au/national/what-do-you-do-for-money-honey-the-problem-with-food-fraud-20181015-p509sh.html>>, archived at <<https://perma.cc/39JS-6EYU>>; Tom Mueller, 'Slippery Business: The trade in adulterated olive oil', *The New Yorker* (online, 6 August 2007).

<sup>6</sup> Food and Agriculture Organization of the United Nations and World Health Organization, 'Joint FAO/WHO food standards programme codex committee on food import and export inspection and certification systems: Discussion paper on food integrity and food authenticity' (2018) CX/FICS 18/24/7, August 2018 <[http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fmeetings%252FCX-733-24%252FWorking%252BDocuments%252Ffics24\\_07e.pdf](http://www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?lnk=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fmeetings%252FCX-733-24%252FWorking%252BDocuments%252Ffics24_07e.pdf)>, archived at <<https://perma.cc/SQH2-542C>>; Louise Manning and Jan Mei Soon, 'Food Safety, Food Fraud, and Food Defense: A Fast Evolving Literature' (2016) 81(4) *Journal of Food Science* R823-34.

<sup>7</sup> Europol, 'Eur 230 million worth of fake food and beverages seized in global opson operation targeting food fraud' (Webpage, 2017) <<https://www.europol.europa.eu/newsroom/news/eur-230-million-worth-of-fake-food-and-beverages-seized-in-global-opson-operation-targeting-food-fraud>>, archived at <<https://perma.cc/HZW6-5V23>>.

<sup>8</sup> Food Safety Net Services, 'What is food fraud?' (Webpage, 2016) <<http://fsns.com/news/what-is-food-fraud>>, archived at <<https://perma.cc/ZWA2-DJQH>>.

which challenges cross-border control.

In an attempt to resolve the global definitional inconsistencies, in 2018 the FAO and WHO convened a meeting whereby participants determined that the failure of agreed definitions and terminology impeded collaborative responses necessary to “mitigate risks associated with deliberate tampering and substitution, misrepresentation, dilution and deception of food”.<sup>9</sup> However, this important step forward failed to acknowledge food fraud as a *crime*. While commitment exists to control food fraud, the lack of criminal response to deter unscrupulous individuals involved and empower consumers, among the victims, is poignant.

Without minimising the important role in ensuring food safety, especially amidst the global COVID-19 pandemic, criminal responses to food fraud are crucial. Food fraud is indeed a crime, rather than merely a harm and needs to be dealt with as such. Indeed, evidence suggests that overwhelmingly, cross-border food fraud is orchestrated by well-organised, sophisticated and funded criminal syndicates and therefore there could be a role under the United Nations Convention Transnational Organized Crime (CTOC) to lead, or further the existing cross-border response.<sup>10</sup> Furthermore, under the guise of CTOC, there is an extensive toolkit to guide law enforcement and policymakers among others in the plight to control food fraud.

The human right to safe, clean, and available food is denied by food fraud and the failure of the international community to address it as a crime only limits the response. This paper argues that while there remains an important role for addressing food fraud from a safety perspective to ensure it is suitable for human consumption, undermining human rights by failing to protect food security due to organised criminal activity, provides an opportunity for food fraud to be addressed within the scope of CTOC. The body of this article is divided into two parts. First, it establishes the right to food and identifies that the existence of food fraud denies that right and as such, requires a shift in thinking from food fraud as a health harm to that of a crime. Then, the article explores the scope of CTOC and discusses the appropriateness of responding to food fraud via CTOC. The paper concludes that to address food fraud effectively, it is necessary to respond from a crime prevention approach.

## II THE RIGHT TO FOOD

Article 25 of the Universal Declaration of Human Rights established that food is a human right, so an obligation exists to secure food.<sup>11</sup> The definition of food security, formulated at the 1996 World Summit on Food Security<sup>12</sup>, incorporates four aspects: food availability; access; utilisation; and stability.<sup>13</sup> In 2019, an estimated 690 million

<sup>9</sup> Food and Agriculture Organization of the United Nations and World Health Organization, ‘Organizations discuss food integrity and authenticity’ (Webpage, 2018) <<http://www.fao.org/fao-who-codexalimentarius/news-and-events/news-details/en/c/1144013/>>, archived at <<https://perma.cc/8PF5-Q3CS>>.

<sup>10</sup> Interpol, ‘Operation Opson VII: Analysis Report Targeting Counterfeit and Substandard Foodstuff and Beverages’ (2018) Document No. 2018/507/OEC/ILM/IGGH EDOC #991203.

<sup>11</sup> *United Nations Universal Declaration of Human Rights* (n 1).

<sup>12</sup> Food and Agriculture Organization of the United Nations, ‘Rome Declaration on World Food Security and World Food Summit Plan of Action’ (Webpage, 1996) *World Food Summit* <<http://www.fao.org/3/w3613e/w3613e00.htm>>, archived at <<https://perma.cc/D3TJ-QB7V>>.

<sup>13</sup> Food and Agriculture Organization of the United Nations, ‘Food Security’, (Policy Brief: Issue 2, June 2006) <[http://www.fao.org/fileadmin/templates/faoitaly/documents/pdf/pdf\\_Food\\_Security\\_Coept\\_Note.pdf](http://www.fao.org/fileadmin/templates/faoitaly/documents/pdf/pdf_Food_Security_Coept_Note.pdf)>, archived at <<https://perma.cc/5DRW-Q62K>>.

people faced undernourishment and food insecurity.<sup>14</sup> According to the FAO, the number of undernourished people is climbing, worsened by the effects of the COVID-19 pandemic.<sup>15</sup> Added challenges created by food fraud, can devastate food security.

Food security necessitates concurrent action at the national, regional, and international levels by a wide variety of organisations addressing varying aspects across of the common issue. At the international level, the FAO and WHO lead a food safety and human security perspective focused on the health of humans. This FAO and WHO food safety partnership led to the establishment of the *Codex Alimentarius*. The Codex provides for its 188 members a means of standardising quality of food trade.<sup>16</sup> The Codex also significantly influences global food definitions and food laws, through discussions with its Member States.

The FAO contributes extensively to the right to food efforts. In 2004, the FAO adopted a suite of essential learnings guiding Member States to integrate international programs, laws and best practices relating to food security into national frameworks. This FAO suite of food security guidance includes, among others, voluntary guidelines<sup>17</sup>; model legislation<sup>18</sup>; and training resources<sup>19</sup> to support national implementation. Remarkably, food fraud is absent from all of these resources.

Food fraud is not a new issue, nor does it discriminate geographically, culturally or in any other way. Countless examples exist of food fraud reported from various countries,<sup>20</sup> however the way in which food fraud is understood and recorded at the international and national levels varies, as there is no universally agreed definition. The FAO and WHO's working definition of food fraud is problematically non-binding.<sup>21</sup> Without a harmonised, binding definition providing clarity in understanding of the nature of food fraud, comprehensive legal frameworks to enable consistent reporting and cross-border law enforcement responses are limited.

Presently, there is no international law that covers food fraud. An overarching international law to address food fraud could provide a vehicle for globally aligned legal and regulatory responses. Such an instrument could enable relevant actors to converge in their food fraud plight and collectively bolster responses to achieve the right to food. The harmful impact of food fraud on food security cannot be underestimated and

---

<sup>14</sup> Food and Agriculture Organization of the United Nations (FAO) et al (n 2).

<sup>15</sup> Ibid.

<sup>16</sup> Food and Agriculture Organization of the United Nations, 'Codex Alimentarius' (Webpage, 2020) <<http://www.fao.org/fao-who-codexalimentarius/home/en/>>, archived at <<https://perma.cc/FQ9N-646D>>.

<sup>17</sup> Food and Agriculture Organization of the United Nations, 'The Right to Food: Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security' (Webpage, 2005) <<http://www.fao.org/3/y7937e/y7937e.pdf>>, archived at <<https://perma.cc/JN68-DMAZ>>.

<sup>18</sup> Food and Agriculture Organization of the United Nations, 'Development of specific right to food legislation' (Webpage, 2014) <<http://www.fao.org/3/i3449e/i3449e.pdf>>, archived at <<https://perma.cc/FT5Y-BKHA>>.

<sup>19</sup> Food and Agriculture Organization of the United Nations, 'The Right to Food Curriculum Outline' (Webpage, 2009) <<http://www.fao.org/3/i0851e/i0851e.pdf>>, archived at <<https://perma.cc/274N-ATYF>>.

<sup>20</sup> European Commission, 'Rapid Alert System for Food and Feed (RASFF)' (Webpage, 2020) <<https://webgate.ec.europa.eu/rasff-window/portal/?event=SearchForm&cleanSearch=1>>, archived at <<https://perma.cc/XS28-UZWN>>.

<sup>21</sup> Food and Agriculture Organization of the United Nations and World Health Organization, *Joint FAO/WHO food standards programme codex committee on food import and export inspection and certification systems: Discussion paper on food integrity and food authenticity* (n 6).

while countless international instruments relate to food security<sup>22</sup>, there is an absence of international law identifying or specifically focusing on food fraud, despite a well-established link between food security and fraud.<sup>23</sup> Without a definition identifying food fraud as a crime, rather than a harm to health or social ill, appropriate criminal responses will remain absent. The international community can contribute to preventing food fraud by increasing awareness, developing definitional clarity, and supporting training of frontline law enforcement to close the gap on food fraud opportunity.

### III BEYOND A HARM: A CRIME PREVENTION APPROACH

Acts of fraud are considered crimes whereby appropriate criminal responses are generally applicable. Cross-border food fraud is commonly a well-organised, low risk, high reward enterprise, attracting criminal syndicates to it.<sup>24</sup> Given that food fraud is well established as being operationalised by organised criminal syndicates, evidence suggests fraudulent food regularly crosses borders to infiltrate legitimate global food supply chains.<sup>25</sup> Criminals are able to infiltrate at several points along the global food supply chain, between the source or point of origin; during transportation; at the wholesaler or distributor; and at the final point of sale, making it particularly vulnerable to fraud.<sup>26</sup> Common among various forms of fraud, food fraud is enabled by other crimes, such as corruption, allowing it to cross borders and enter markets seamlessly.<sup>27</sup> Thus, food fraudsters are among those members of *uncivil society*, referred to in the CTOC forward. Specifically, “They are terrorists, criminals, drug dealers, people traffickers and others who undo the good works of civil society”.<sup>28</sup> Law enforcement responses to food fraud must be equally sophisticated to appropriately respond, and agreement on definitions to support such responses is necessary, while acknowledging available law enforcement resources and actual threat of human harm.<sup>29</sup>

Mobilisation of law enforcement to respond to cross-border crime necessitates harmonised agreements enabling a coordinated, cooperative response. Cross-border crimes challenge the most capable police forces. Joint policing agreements can smooth operational challenges, though even slight bureaucratic delays to approve policing across international borders can render a criminal operation fruitless. To facilitate,

<sup>22</sup> See for example *Food and Agriculture Organization of the United Nations International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, opened for signature 2 March 2001 (‘IPOA-IUU’); United Nations, ‘Transforming our world: the 2030 Agenda for Sustainable Development A/RES/70/1’ (n 3); Food and Agriculture Organization of the United Nations, *The Right to Food: Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security* (n 17).

<sup>23</sup> See for example Jenny Clover, ‘Food Security In Sub-Saharan Africa’ (2003) 12(1) *African Security Studies* 5-15; Charlotte McClain-Nhlapo, ‘Implementing a Human Rights Approach to Food Security’ (2004) 2020 Africa Conference Brief 13 <<https://www.ifpri.org/publication/implementing-human-rights-approach-food-security>>, archived at <<https://perma.cc/P2FD-CUWL>>; Kerstin Mechlem, ‘Food Security and the Right to Food in the Discourse of the United Nations’ (2004) 10(5) *European Law Journal* 631–648.

<sup>24</sup> Interpol (n 10).

<sup>25</sup> *Ibid.*

<sup>26</sup> Jade Lindley, ‘Food Fraud: An International Snapshot And Lessons For Australia’ (2020) 27(4) *Journal of Financial Crime* (advance) <<https://doi.org/10.1108/JFC-09-2020-0179>>.

<sup>27</sup> *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, (entered into force 29 September 2003) (‘CTOC’), preambular para 11.

<sup>28</sup> *Ibid.*

<sup>29</sup> John Spink et al, ‘Food fraud prevention shifts the food risk focus to vulnerability’ (2017) 62(April) *Trends in Food Science & Technology* 215.

CTOC provides ratifying Member States a toolkit to facilitate coordinated efforts to respond to transnational crimes.<sup>30</sup> Harmonisation of definitions, legal frameworks, and law enforcement responses provided in the CTOC toolkit can positively suppress and prevent organised crime and enable prosecution. While there is necessity for the FAO and WHO, among others, to maintain a central role in addressing food fraud, a shift in focus to integrate a crime prevention response makes sense. CTOC explicitly provides for organised crime, which as highlighted previously, precisely fills the existing gap in addressing food fraud.

In January 2000, the UN General Assembly adopted CTOC building on discussions held in 1998 on the need for a global action plan in response to transnational organised crime.<sup>31</sup> The purpose of CTOC is to promote cooperation to prevent and combat transnational organised crime more effectively.<sup>32</sup> Importantly, CTOC notes that it “will constitute an effective tool and the necessary legal framework for international cooperation in combating, *inter alia*, such criminal activities as money-laundering [and] corruption”.<sup>33</sup> While corruption is not covered extensively in CTOC<sup>34</sup>, it establishes the integral role of corruption in enabling other cross-border crimes, including all forms of fraud.

As criminal groups embrace sophisticated technologies and take advantage of open economies and free markets, national weapons of crime prevention are rendered almost obsolete. This is of particular concern in those locations where national legal frameworks are already weak and enabling crimes such as rife corruption not only increase the likelihood of being targeted by criminals, but also worsen the potential impact suffered. Instead, CTOC facilitates cross-border cooperation, the ultimate tool in transnational crime fighting.<sup>35</sup>

The importance of adopting a universally agreed definition of food fraud is beyond smoothing an administrative burden. Applying a CTOC perspective in response to food fraud necessitates it is considered a *serious crime*, as defined in Article 1.<sup>36</sup> CTOC Article 1 requires a serious crime to attract a penalty of over four years of incarceration within national legal frameworks of its Member States.<sup>37</sup> Fraud is overwhelmingly punished by a sentence equal to, or in excess of four years of incarceration. Thus, by adopting a binding definition of food *fraud*, which equates to a *serious crime*, unlocks the potential for food fraud to be dealt with alongside other transnational organised crimes that fall

<sup>30</sup> CTOC (n 27).

<sup>31</sup> *United Nations Resolution Adopted by the General Assembly: 54/126 Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto*, (entered into force 26 January 2000) (*‘A/Res/54/126’*); *United Nations Resolution Adopted by the General Assembly: 52/85 Follow-up to the Naples Political Declaration and Global Action Plan against Organized Transnational Crime*, (entered into force 30 January 1998) (*‘A/Res/52/85’*); *United Nations Resolution Adopted by the General Assembly: 53/114 Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in particular its technical cooperation capacity*, (entered into force 20 January 1999) (*‘A/Res/53/114’*); *United Nations Resolution Adopted by the General Assembly: 53/111 Transnational Organized Crime*, (entered into force 20 January 1999) (*‘A/Res/53/111’*).

<sup>32</sup> CTOC (n 27): Article 1.

<sup>33</sup> *Ibid.*: Preamble.

<sup>34</sup> Corruption is mentioned only four times in CTOC, however due to its extensive criminal reach and devastating impact on societies it is specifically captured in the *United Nations Convention Against Corruption*, (entered into force 14 December 2005) (*‘United Nations Convention Against Corruption’*).

<sup>35</sup> CTOC (n 27).

<sup>36</sup> *Ibid* Article 2(b).

<sup>37</sup> *Ibid.*

within the scope of CTOC. Presently in many jurisdictions, harms against food would not fit within CTOC's definition of a serious crime and results in food-related harms sanctioned administratively with lighter penalties than if dealt with criminally as a form of fraud.<sup>38</sup> This use of CTOC will broaden existing national definitions of fraud to include fraud against food, enabling national legal and regulatory responses and ensure that the maximum penalty can be applied to minimise recidivism.

To facilitate cross-border cooperation and coordination of responses, CTOC provides a toolkit of resources. At the time of writing, 147 Member States signed CTOC with a total of 190 Member States party to it. With almost universal adoption of the instrument, overlaying the existing CTOC responses enables Member States to cooperate effectively on food fraud. Usefully, the toolkit encourages stakeholder engagement to inform national and regional responses by harmonising and bolstering responses through access to model laws, and guidance on developing national laws and applying international laws; knowledge hubs, case repositories and databases; law enforcement and judicial training manuals and modules; support to establish cross-border agreements on issues such as mutual legal assistance and extradition; and in country supports to develop expanded understanding of food fraud methods. Collectively, the toolkit contributes to and builds on existing knowledge and available information to enable best practice to be applied universally. Presently, most data held on food fraud is closed from the public, accessible only through high cost subscription, limiting access to knowledge. As such, if developed, the CTOC toolkit on food fraud would be an open and publicly shared information bank to provide real-world, up-to-date cases, responses, outcomes and other relevant information available to all governments and relevant stakeholders.

#### IV CONCLUSION

Food fraud undermines the right to food by threatening food security. Inconsistent definitions of food fraud prevent the international community from having a consistent response. Notwithstanding the commitment by the FAO and WHO in progressing the food security agenda, the failure to recognise food fraud as a serious crime limits the likelihood of application of harsher criminal responses to minimise recidivism.

In most cases, national legislation deals with fraud as a serious crime, therefore internationally agreeing on a definition as a form of fraud would enable crimes against food to be included within the scope of CTOC as a serious crime. This article sought to situate that with universal agreement on a definition of food fraud, CTOC presents a suitable international legal framework through which criminal responses may be underpinned. Based on the arguments presented, this paper concludes that it is necessary to incorporate a crime prevention approach if seeking to address food fraud effectively.

---

<sup>38</sup> Spink et al (n 29); Food and Agriculture Organization of the United Nations and World Health Organization, *Joint FAO/WHO food standards programme codex committee on food import and export inspection and certification systems: Discussion paper on food integrity and food authenticity* (n 6).