

CHAPTER II - LITERATURE REVIEW ON THE LINKAGE BETWEEN THB AND CORRUPTION, RESEARCH HYPOTHESIS AND METHODOLOGY

2.1 WORKING DEFINITIONS

2.1.1 Definition of THB

Following the enactment of the 2000 United Nations (UN) Convention against Transnational Organized Crime, an international agreement was reached defining the essential elements of THB. An international definition is crucial to the gathering of information and registration of data. The establishment of a universal concept minimizes dependence on an individual country's definition by establishing a common notion of what needs to be addressed, facilitating the comparability of data.

For the purposes of this thesis, the term “trafficking in human beings” (THB) will follow the definition described in Article 3 (a) of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, an achievement of the ratification of the 2000 UN Convention against Transnational Organized Crime:

Article 3 (a) Trafficking in persons shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.

Brazilian Penal Code follows both the UN Convention and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, and establishes as crimes both domestic and international trafficking.¹ For the purpose of this thesis, domestic trafficking will be characterized as the illegal transfer of a person between cities, federal states or regions.

¹ Brazilian Penal Code (1940), Articles 231 and 231-A.

Trafficking will refer only to trafficking in women and minors for the purpose of sexual exploitation. As the data do not permit extensive analysis, the issue of whether criminal activity is carried out by organized groups or by smaller networks is not taken into consideration by this work. However, organized crime is on the rise and anecdotal evidence demonstrates that criminal groups involved in THB are also involved in other types of criminal activities, such as drug trafficking as “diversification of tasks minimises the law enforcement risk” (Budapest Group, 1999:3).

2.1.2 Definitions of Corruption

Corruption is an “extremely complex social behaviour” (Collier, 2002:2), a criminal phenomenon which is difficult to define and measure.² The definition of corruption used in this study will follow those detailed by Articles 15 (bribery of national public officials), 18 (trading in influence) and 19 (abuse of functions) of the 2003 UN Convention against Corruption, Article 2 of the 1999 Civil Law Convention on Corruption, established by the Council of Europe,³ and the broader definition laid out by Transparency International (“abuse of public office for private gain”). Corruption, for the purpose of this study, refers only to *official* corruption.

Bribery of national public officials, as stated by the 2003 UN Convention against Corruption, is as follows:

- Article 15 (a) The **promise, offering or giving**, to a public official, directly or indirectly, of an **undue advantage**, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
- (b) The **solicitation or acceptance** by a public official, directly or indirectly, of an **undue advantage**, for the official himself or herself or another person or entity, in order that the

² As stated in international literature, “corruption is a complex and multifaceted phenomenon with multiple causes and effects as it takes on various forms and functions in different contexts” (Andvig et al., 2001:4). Davis and Ruhe (2003:277), also mention that “corruption, as with many ethical concepts, is very difficult to define in a universally acceptable fashion.” Génaux (2004:13), citing the “complexity and richness of the idea of corruption,” notes that the concept is often lost in the “narrower and more technical usages that dominate contemporary debate and analysis.” Moroff (2004:85) highlights that corruption is always defined as an unethical conduct, violating the duties of a public office in detriment to the public interest. See also Del Ponte, 1995; TI Source Book, 2000.

³ Council of Europe: European Treaty Series (ETS) – № 174

official act or refrain from acting in the exercise of his or her official duties. [Emphasis added]⁴

The Council of Europe, via the 1999 Civil Law Convention on Corruption, has established the following as a definition of corruption:

Article 2 For the purpose of this Convention, “corruption” means **requesting, offering, giving or accepting**, directly or indirectly, **a bribe or any other undue advantage** or prospect thereof, **which distorts the proper performance of any duty or behaviour required of the recipient** of the bribe, the undue advantage or the prospect thereof. [Emphasis added]

Trading in influence, as stated by the 2003 UN Convention against Corruption, is as follows:

Article 18 (a) The **promise, offering or giving** to a public official or any other person, directly or indirectly, of an **undue advantage** in order that the public official or the person **abuse his or her real or supposed influence** with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person. [Emphasis added]

(b) The **solicitation or acceptance** by a public official or any other person, directly or indirectly, of an **undue advantage** for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage. [Emphasis added]⁵

⁴ Corruption, as stated by the 2003 UN Convention against Corruption, follows the same definition of the 2000 UN Convention against Transnational Organized Crime.

Like the UN Convention against Corruption, the 1999 Council of Europe’s Criminal Law Convention on Corruption [European Treaty Series (ETS) – № 173] proscribes active bribery and passive bribery also as criminal conducts. Passive bribery is defined by the Council’s definition as follows: Article 3 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the **request or receipt** by any of its public officials, directly or indirectly, of any **undue advantage**, for himself or herself or for anyone else, or the **acceptance** of an offer or a promise of such an advantage, to act or refrain from acting in the exercise of his or her functions. [Emphasis added]

The Brazilian Penal Code, in accordance with these definitions, also distinguishes between active and passive bribery (Articles 333 and 317, respectively).

⁵ The Council of Europe’s Criminal Law Convention on Corruption also defines trading in influence as a corrupt practice in Article 12: ... the **promising, giving or offering**, directly or indirectly, of any **undue advantage** to anyone who asserts or confirms that he or she is able to exert an **improper influence over the decision-making** of any person referred to in Articles 2, 4 ... in consideration thereof, whether the undue advantage is for himself or herself or for anyone

Abuse of functions, as stated by the 2003 UN Convention against Corruption, is as follows:

Article 19: ... [it is] a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or another person or entity.

The definition of a public official will follow the broad definition of the 2003 UN Convention against Corruption:⁶

Article 2 (a) “Public official” shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a “public official” in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, “public official” may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

According to Andvig et al. (2001:7),⁷ public officials “can be anyone from the president and top political leadership (political corruption) down through the hierarchy (bureaucratic corruption) to the most remote local government public servant” and “can take place

else, as well as the **request**, **receipt** or the **acceptance** of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result. [Emphasis added]

Article 2 refers to any domestic public official.

Article 4 refers to members of domestic public assemblies as any person who is a member of any domestic public assembly exercising legislative or administrative powers. [Emphasis added]

The Brazilian Penal Code has adopted this definition, as laid out in Article 332 (1995).

⁶ The 2000 UN Convention against Transnational Organized Crime defines public official in Article 8 (4) as: Public official shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function. “Public official” following the Article 1 of the Criminal Law Convention on Corruption (Council of Europe Convention) shall be understood by reference to the definition of “official,” “public officer,” “mayor,” “minister,” or “judge” in the national law of the State in which the person in question performs that function and as applied in its criminal law.

⁷ Cf. Corruption: A Review of Contemporary Research.

between the different branches of government (like the executive, legislative and judicial branches), and between the political and administrative/ bureaucratic institutions (the civil service, local authorities and parastatals).”

The above-mentioned definitions of corruption demonstrate the difficulty of defining and measuring this criminal phenomenon. Thus, it is difficult to characterize the true nature of the crime and to gather convincing evidence against its perpetrators. For instance, a country with a high level of judicial records is not necessarily corrupt; rather a high record level may reflect the efficiency of law enforcement and not the real extent of the phenomenon (TI, 2001, Background Paper).

The legal definitions set out by international organizations generally focus on bribery/ any undue advantage, in keeping with the common understanding of corruption as a finance-related crime. In reality, however, corruption involves a range of illicit behaviour violating not only explicit legal codes but also professional codes of ethical conduct (Del Ponte, 1995), as defined by the Civil Law Convention on Corruption (Council of Europe).

Senturia (1931, *in* Alemann, 2004:29) has established a broader definition of official corruption that includes private profit as a key element in addition to the standard combination of public power and its misuse. Private profit, according to Senturia, comprises “not only monetary advantages... but also services of a monetary value” (Alemann, 2004:29). Adapting Alemann’s ideas on corruption (2004:30) to describe THB-related corruption incidents, the following components can be said to belong to the exchange system: 1) a recruiter/ trafficker/ exploiter whose demands may include 2) documents, services, favors, silence, or protection from punishment from 3) an able and willing public official, who in turn 4) receives money (bribery) and/ or sexual favors from trafficked victims, thereby 5) violating the law and the norms regarded by Brazilian society as legitimate.⁸

Regardless of the crime or its seriousness, public officials must comply with the law and pursue the public interest. Any activity intentionally contrary to that may be considered corrupt, even if a public official does not explicitly employ his or her office to commit the

⁸ For an in depth discussion of corruption and its moral-ethical implications, see Ejikeme-Onukwufor, 2006.

offence. This is especially true if a public official commits an offence knowing that his or her office will be protected *post facto* (trading in influence/ influence peddling).

The special particularity of the engagement of public officials in the sexual services of minors (detailed in Chapter III of this thesis), is characterized as a corrupt act in so far as public officials are destined to follow the rule of law and as such to protect the rights of minors.⁹ The engagement of any citizen in the sexual exploitation of a minor already constitutes a criminal act, but when practiced by a public official who has the moral, political and ethical mandate to uphold the law, there is an added element of criminality. Their conduct is considered corrupt because it constitutes an unethical and unacceptable violation of their official obligations. In other words, it distorts their proper performance, their duties and the behaviour required of them (Article 2 of the Council of Europe Civil Law Convention on Corruption).¹⁰ Public officials who engage in the sexual services of trafficked minors are deviating from:

- The conduct required of any citizen regardless of status or position
- The legal obligation beyond that of other citizens to protect minors
- The legal obligation beyond that of other citizens to combat TBH
- The standards of conduct and the commitment to ethical rules of administration
- Proper performance of any duty or behaviour required of them

The key issue here is one of enablement. A public official engaging in sexual activity with trafficked minors enables criminality in two ways. First, illicit sexual service itself constitutes a form of bribery in so far as the public official, by engaging in this activity, is in effect receiving a reward for “looking the other way.” Secondly, the offender’s public office explicitly establishes a potential for special treatment,¹¹ either before or after the fact. The

⁹ Both the Brazilian Federal Constitution (1988) and Federal Law № 8.069 (1990) also known as Statute for Children and Adolescents (“Estatuto da Criança e do Adolescente” or ECA), establish the integral protection of minors as a constitutional principle.

¹⁰ Lindgreen (2004:3) asserts the distinction that has been made between economic and social corruption: the first includes exchanges of money or goods while the latter includes clientelism, nepotism, and other forms of favoritism.

¹¹ Special treatment can range from a guarantee of confidentiality from the trafficker and/or investigating officer to lack of charges and dismissal of sanctions.

higher the rank of a public official, the greater the certainty of this potential. Thereby, their conduct is, to a greater degree, more aggressive than the conduct of an average citizen.¹²

2.2 OVERVIEW OF CURRENT SCIENTIFIC LITERATURE ON THE LINKAGE BETWEEN THB AND CORRUPTION

Analysis of human trafficking and corruption as combined phenomena is a rather new area of research. Although much of the information is based on individual perceptions, as well as specific case studies and journalistic reportage, the earliest scientific studies to approach both crimes as interrelated phenomena were initiated as late as 2000. Currently the knowledge is limited and not specifically addressed by criminologists.¹³ To date, the scientific literature on THB-related corruption focuses almost exclusively on Southern and Eastern Europe. Latin America and the Caribbean are two of the most under-researched and under-funded regions in the world for THB studies (Langberg, 2005). Existing scientific research is still too limited to demonstrate the magnitude of the problem or allow for concrete policies to be drawn. The THB and corruption approaches of Lyday (2001), PACO Networking (2002), and Bales (2005), provide starting points for the theoretical basis of this thesis. Where Lyday and Bales identify the link between THB and corruption, PACO Networking locates the specific points of vulnerability to corruption throughout the THB process. Although each of the three approaches provide valuable theoretical insight into the links connecting both phenomena, neither approach is based on concrete evidence of THB and corruption incidences, but rather formulates broad conclusions using estimations on THB and TI's CPI index perceptions on corruption.

2.2.1 Approach of Corbin Lyday

Corbin Lyday was among the first researchers to analyse human trafficking from an anti-corruption perspective. In order to statistically prove the linkage between THB and corruption, he used two variables. The first was an indicator of THB based on the Victims

¹² Not only the conduct of public officials who engage in the sexual services of trafficked minors deviate from legal standards of behavior but also it conflicts with the public interest and public opinion (Zimring and Johnson, 2005). This is especially true when considering the legal system and the organization of society's values in Brazil.

¹³ Even though many theories exist to explain THB and corruption independently, no theory focuses specifically on the links that bind them.

of Trafficking and Violence Protection Act, enacted by the United States in 2000,¹⁴ which classifies countries according to their compliance with certain anti-trafficking standards. The second was the 2000 Corruption Perception Index (CPI) from Transparency International (TI), which assessed perceptions of corruption in 91 countries.¹⁵

The US Victims of Trafficking and Violence Protection Act of 2000 is a public law that requires the US Secretary of State to inform Congress about severe forms of trafficking around the world on a yearly basis, listing different countries where trafficking is considered a serious issue. It also specifies that the US government can subject all Tier 3 countries to non-humanitarian, non-trade related sanctions (Lyday, 2001). Its report, published annually, is called TIP (Trafficking in Persons Report) in which the classification of countries is broken down into “Tiers:” Tier 1 countries are states which comply with the minimum anti-trafficking standards; Tier 2 countries are states which are taking active steps to do so; Tier 3 countries are states which neither meet the minimum standards nor are taking active steps to do so.

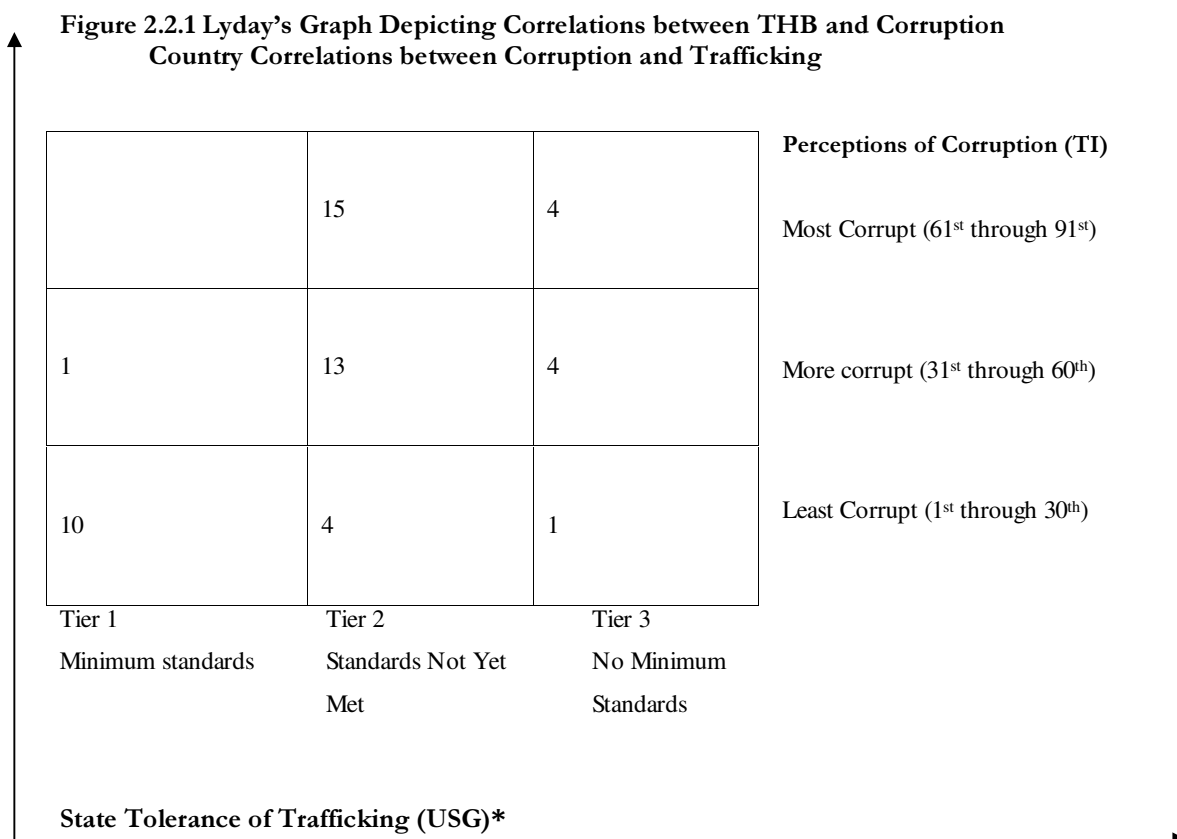
In order to find direct links between corruption and trafficking, Lyday compared the CPI indices with the classification of countries according to the TIP report. He divided the CPI into 3 groups: group 1 countries with a low level of corruption (1 to 30 on the CPI scale); group 2 countries with a medium level of corruption (31 to 60 on the CPI scale); and group 3 countries with higher levels of corruption (61 to 91 on the CPI scale). He then compared the CPI groups with the three Tier categories in the US Victims of Trafficking and Violence Protection Act. Lyday’s analysis revealed a strong relationship between perceptions of corruption and the level of government response to THB.

10 out of 11 countries in Tier 1 were also in the group of least corrupt countries on CPI scale. Likewise, no Tier 1 country was placed in the group of most corrupt. Tier 2 shows a lesser but still strong relationship with category 2 with 13 states following in both, Tier 2 and category 2 countries. While a strong relationship exists between Tier 2 and category 3 countries, the relationship is less strong between Tier 3 and group 3. The following Figure

¹⁴ Public Law 106-386 of Oct. 28, 2000.

¹⁵ The TI’s CPI “represents an index, a ‘poll of polls’, constructed by a team of researchers at Göttingen University from a number of individual surveys of businessmen or local population of the relevant countries as well as several ratings by economic risk analysts and country experts” (Treisman, 2000).

2.2.1 demonstrates the relationship between Tier countries and TI CPI index according to Lyday's analysis.



Source: Lyday, C., B. (2001). The Shadow Market in Human Beings: An Anti-Corruption Perspective; Proceedings of the 10th International Anti-Corruption Conference – IACC, Prague, Czech Republic, 7-11 October 2001

Note: *United States Government

Brazil is located within the Tier 2 countries and falls into the medium level corruption countries group. According to this analysis, Brazil is a typical example where THB is positively correlated with the level of perceived corruption.

Considerations

The approach of Lyday is one of the first approaches establishing a one-to-one positive relationship between corruption and THB on a global level. This achievement provides a valuable contribution. However, as an approach, it also has the following limitations:

- Use of questionable variables. The CPI index measures only perceptions of corruption among business professionals in the countries surveyed. This means that no direct measurement of corrupt activity has been made. Despite the difficulties of obtaining direct corruption variables, the objectivity of his study is limited.
- Almost the same limitations apply to the classification of countries into Tiers, according to their “compliance with laws against THB.” The objectivity of this measure is questionable since a country which upholds its basic anti-trafficking law does not necessarily either reinforce law enforcement agencies with the tools necessary to combat THB, nor does account for the effectiveness and capacity of a country’s judiciary system. As asserted by Bales (2005:97), “the system of ‘tiers’ is an interesting variable, but does not actually measure human trafficking, rather the response of a given country to trafficking.”

Lyday’s approach, however limited in scope, demonstrates that a macro-level (cross-country) link between both phenomena exists, reinforcing the stated need for further research.

2.2.2 The PACO Networking Approach

PACO Networking was a project launched by the Council of Europe in 2001, under the PACO Programme to Combat Corruption and Organised Crime in South-Eastern Europe, for the purpose of enhancing mutual cooperation. Delegates from member nations worked together to identify problems and make recommendations on how to improve cooperation.

In 2002, the member nations recommended an expansion of the project. The issue of THB received particular attention due to the difficulty of cooperation among member states when THB was in question. The most frequently cited obstacle was “the lack of mutual trust and confidence” which was “directly related to the question of corruption” (Report, 2002:3).

To address specific issues related to THB, a regional seminar was held in Portoroz, Slovenia.¹⁶ For these purposes delegates from member nations worked together to identify problems and make specific recommendations related to THB issues, as well as to complete a manual on judicial cooperation among South-Eastern European countries. A final report was published proposing measures to be adopted by countries to combat corruption and THB.¹⁷ Recommendations were also made to strengthen the law enforcement of anti-corruption measures, including support for regional law enforcement agencies, joint training, seminars, and the establishment of more rigorous codes of conduct.

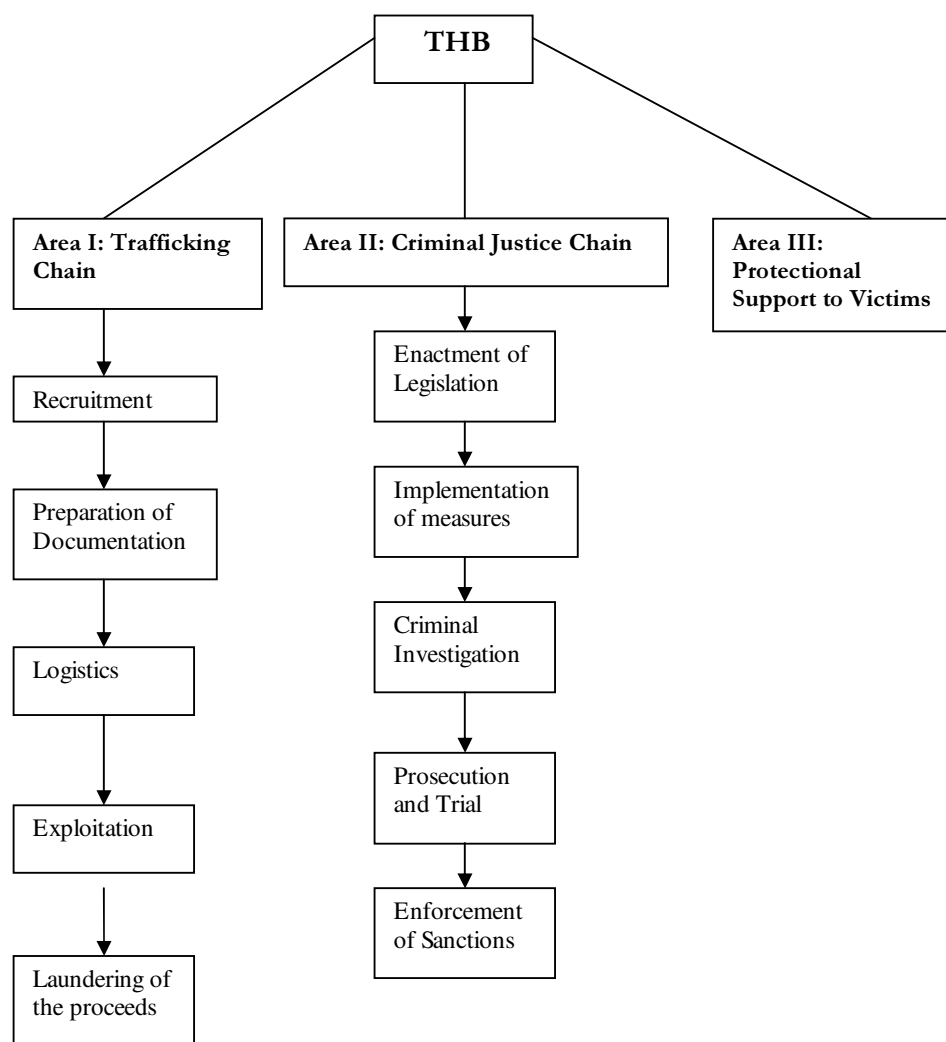
THB as a criminal phenomenon is not represented by a single criminal act but rather a process of criminal activities. Due to this legal complexity, PACO Networking divided the process of THB into three main areas and then divided each area into separate phases. These three main areas are: (1) corruption within the trafficking chain; (2) corruption within the criminal justice chain; and (3) corruption within the protectional support to victims. Each area involves different phases with distinct points of vulnerability to corrupt behaviour.

The project does not only thoroughly describe each phase, but also highlights the various official positions most susceptible to corrupt involvement, as well as the various acts that can be classified as corrupt. The different phases in the THB process are shown in Figure 2.2.2 (on the following page) in which corruption may occur.

¹⁶ Reports presented during the seminar described cases of THB, illustrating specific weak points, counter-trafficking measures to be implemented, and explanations on the major obstacles being faced by regional anti-trafficking efforts in each country. Using the situation in the Balkan region as a model, the final report provides a view of the dynamic relationship between THB and corruption and proposes tools for futures counter-measures.

¹⁷ The measures proposed by PACO Networking fell into two categories. The first addressed the necessity for cooperation between different criminal justice agencies (domestically and internationally), as well as between criminal justice agencies and anti-trafficking organizations, particularly NGOs serving as intermediaries between victims of THB and the criminal justice system. Furthermore, the report encouraged the development and support of witness protection programs to enhance cooperation and ensure the safety of victims. The second category of measures dealt specifically with the enforcement of anti-corruption measures to ensure the systematic enforcement of anti-trafficking laws. Additionally, the report emphasized the necessity of increased public awareness of THB through education.

Figure 2.2.2 THB and the Vulnerable Points to Corruption



Source: Author's elaboration of PACO Networking framework, 2002

Corruption within the Trafficking Chain

The phases of the trafficking chain as described by PACO Networking in Figure 2.2.2 (above) are: (1) the recruitment of victims; (2) preparation of all necessary documentation; (3) logistics; (4) all subsequent control and exploitation of trafficked victims as a result of the previous stages; and (5) laundering of the proceeds. Corruption may occur at any point in this process and ranges from passive behaviour (ignoring, tolerating or avoiding action)

to active participation in criminal acts (violation of duties, corruption, organized crime), as defined by domestic and international criminal laws.

Those most susceptible to corruption are public officials whose jobs place them at vulnerable points in the trafficking chain (e.g. customs/ border control officers, visa and immigration officers, transportation authorities, local police as well as elected/ appointed authorities,¹⁸ their assistants, or appointed assistants).

Corruption within the Criminal Justice Chain

PACO describes the most vulnerable points for corrupt practices in the criminal justice chain. It also describes the categories of different behaviour that might enable THB, as well as the profiles of public officials most likely to be involved in these practices.

Thus, the criminal justice chain is divided into the following phases as described in Figure 2.2.2 (above): (1) the enactment of legislations; (2) the implementation of measures; (3) criminal investigations; (4) prosecution and trial; and (5) enforcement of sanctions. Each of the above represents a point of vulnerability to corruption in the criminal justice chain.

Corrupt practices during the criminal justice chain follow the same categories of conducts as in the trafficking chain but include additional acts such as the disclosure and sale of information, as well as the obstruction of investigations and judicial proceedings. In addition to the public officials listed in the trafficking chain, vulnerable parties in this phase also include judges and prosecutors.

Corruption in the Protection and Support of Victims

The third area in which corruption may occur is among NGOs, civil society organizations and public social service institutions providing support, protection and shelter to victims of THB. This area was considered important by PACO Networking due to the general infiltration of these institutions by organized criminal groups in the Balkans. However, this area is not considered specifically relevant to this thesis. In reality, Brazil is almost absent

¹⁸ Elected authorities can be city, state and federal deputies, senators, mayors and/ or their assistants.

of witness protection programmes (Langberg, 2005:132),¹⁹ although it seems that the federal Government has recently started to tackle THB more seriously. It is common knowledge that countries of origin do not provide adequate support to victims, lacking in data and adequate policies.²⁰ Even Bales explicitly mentions the ineffectiveness in the short term rehabilitation of victims in the origin country. Moreover, he adds that “this is an area of profound ignorance ... crying out for the attention of academics and cooperation between practitioners” (2005:125). Therefore, this area remains as a topic for future research.

Considerations

The PACO Networking project focused primarily on developing strategies and measures to combat corruption related to THB in the region of South Eastern European countries (especially the Balkans). It was not intended to provide a scientific method to analyse corruption in combination with THB. Due to the fact that all participating countries used this framework for reporting individual case studies, no generalizations can be made and no quantitative analyses can be applied. However, the work of PACO Networking provides excellent guidelines for anti-corruption and anti-trafficking measures, as well as a structured classification of the chronological events of corruption during the THB.

This thesis has employed the guidelines of the PACO Networking project, and its detailed framework, to identify the most vulnerable points of corruption in the Brazilian trafficking chain and criminal justice chain.²¹

¹⁹ Brazil's specialized governmental offices to assist victims of THB have been set up in Goiás and São Paulo (UNODC, 2005).

²⁰ Signatories of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, are obligated both to combat the root causes and provide protection to victims of THB.

²¹ Cf. chap. III, sec. 3.6

2.2.3 Approach of Kevin Bales

THB for the purpose of sexual exploitation is closely connected with slavery. As an expert on modern slavery, Kevin Bales defines three key dimensions of slavery: “loss of free will, the appropriation of labour power, and the use of threats or violence” (Bales, 2005). Using this definition, he classifies practices such as sexual slavery, child prostitution, and forced prostitution as forms of slavery.²² All three types of crimes may involve THB. Bales uses estimates on global levels of slavery and human trafficking, and classifies countries according to their levels of slavery and THB.

Bales’ Process of Data Collection

Bales identifies three major problems related to the collection of data on slavery: (1) the hidden nature of enslavement which forces criminals to act underground, impeding/ hampering its measurement; (2) the lack of a uniform definition about slavery, which leads to the difficulty of systematic data collection; (3) the fact that crime is better understood in the social context where it happens; in certain contexts slavery is not a crime. He also identifies the following difficulties when THB is taken into account: (1) lack of

²² Applying Bales’ definition it is possible to identify in many practices the three dimensions of slavery. The practices that have not all dimensions, do not, therefore, constitute slavery by this definition. Bales constructed the table below to show the three key variables of his definition matching them with recognizable slavery practices by international agreements.

✓ = *present in the practice*; ✗ = *not a necessary condition of the practice*;

✓/✗ = *sometimes present, sometimes not*

Practice	Loss of Free will	Appropriation of Labor Power	Violence or the Threat of Violence
White slavery	✓	✓	✓
Forced labor	✓	✓	✓
Debt bondage	✓	✓	✓
Child prostitution	✓	✓	✓
Forced prostitution	✓	✓	✓
Sexual slavery	✓	✓	✓
Abusive treatment of Migrant workers	✓/ ✗	✓/ ✗	✓/ ✗
Prostitution	✓/ ✗	✓/ ✗	✓/ ✗
Forced marriage	✓/ ✗	✓/ ✗	✓
Apartheid	✓/ ✗	✗	✓
Incest	✓/ ✗	✗	✓
Organ harvesting	✓/ ✗	✗	✓/ ✗
Caste	✗	✗	✓
Prison labor	✗	✓/ ✗	✓

Source: Bales, K. (2005) *Understanding Global Slavery*. United States: University of California Press

accurate data; (2) unwillingness of victims to report their cases; (3) intimidation of victims and witnesses; (4) lack of standard definitions.

The database he built included three levels, reflecting his early exploratory research: micro-level data (“individual level”), meso-level data (“group or community level”) and macro level data (“societal or aggregate level”).²³ The database was compiled from a variety of sources: individual interviews, national statistical data from governments and NGOs, press agencies, as well as academic and non-academic international research.

After assembling all the data, Bales aggregated them into ordinal level variables. In order to be able to compare country levels of THB and slavery, Bales applied a 5-point ordinal scale.²⁴ Each country was assigned a categorical point value referring to its place on the slavery and THB scales, zero being the lowest and four being the highest. According to this classification, Brazil ranks fourth in incidences of slavery as well as fourth in human trafficking. The numbers of actual slaves are estimated between 100,000 and 200,000.

His results, however, do not represent precise numerical measures or the actual numbers of trafficked persons as such concrete data are extremely difficult to obtain.

Bales’ Variables Measuring Slavery and THB

Although it is generally accepted that slavery, like trafficking, is rooted in poverty, corruption, sexism, etc., these are all general causes that have not been proven sufficiently. Using data from multiple sources, Bales performed statistical tests to isolate which variables, if any, might be the causal factors (explanatory variables). Performing tests (multiple regressions) with multiple variables, he was able to isolate five predictive factors for slavery, and six for trafficking. The variables that predict slavery, in descending order of influence, are:

²³ Bales, 2005

²⁴ Scale for slavery: 0 = no slavery; 1 = very little, occasional slavery; 2 = small but persistent amount of slavery; 3 = slavery regularly found in a few economic sectors; 4 = slavery regularly found in several economic sectors.

Scale for THB: 0 = no trafficking; 1 = rare cases of trafficking; 2 = occasional, but persistent cases of trafficking; 3 = regular cases of trafficking in small numbers; 4 = regular cases of trafficking in large numbers.

- Infant mortality rate
- Proportion of the population below the age of fourteen
- Proportion of the workforce in agriculture
- Governmental corruption (CPI)
- Extent to which a country has threatened or endangered species

According to Bales, “these findings underline basic assertions about what reduces enslavement: education, anticorruption measures, economic supports for the poor, and protection of the environment” and “show that generally accepted notions of causation and relationship gathered from the field can be examined.”²⁵

Regarding THB, Bales points out that “in any case of trafficking, there is a unique set of causes and effects” (Bales, 2005:141). Nonetheless, he grouped the influential factors into “push” and “pull” sets.²⁶ The former characterizes the weaknesses of a source country’s social-political-economical situation, while the latter characterizes the incentives offered by destination countries. He was then able to isolate the factors that most strongly predict THB. He found the following “push” factors to be the most significant:

- Level of a country’s governmental corruption
- Infant mortality rate
- Proportion of the population below the age of fourteen
- Level of food production
- Population density
- Level of conflict and social unrest the country suffers²⁷

These variables characterize an underdeveloped country. This is typical for THB source countries. Although Bales is humble about his “small test,” it nevertheless provides an adequate foundation for further research in the field, especially that which seeks to identify specific weaknesses within countries (Bales, 2005:107). On the other hand, for THB destination countries, the most significant “pull” factors were:

²⁵ Bales, 2005:139

²⁶ For other “push” and “pull” factors, cf. chap I, sec. 1.2.

²⁷ Bales, 2005:139

- Proportion of the destination's country's male population over the age of sixty
- Level of governmental corruption
- Level of food production
- Level of infant mortality²⁸

The above variables are all indicators of wealthy countries, which reinforce the common knowledge that poor countries are sources of human beings while rich countries remain the destination of trafficked persons. The best option for a trafficker is a rich destination country with sufficient level of corruption to permit the victim's transfer (Bales, 2005:140).

Considerations

The major factor limiting Bales' work is the variables used to measure corruption and THB. The level of country corruption was measured by TI's CPI index (Bales, 2005). The weak point of the CPI index is the fact that it is based on perceptions and does not reflect the real extent of corruption in a country. On the other hand, the data provide a way to measure corruption compensating the lack of hard data, a characteristic of crimes classified as having often a hidden nature. The same criticism can be applied on the data used to measure THB, which is based on estimates only and not on actual data.

Taking into account these deficiencies and limitations this author uses different variables to measure both corruption and THB. The idea of this thesis is not to repeat a cross-country analysis but to probe deeper into the phenomenon of THB and corruption as interrelated phenomena within Brazil. Applying statistical tests, it is this author's contention that the correlation between corruption and THB can be further explored. Additionally, regional analysis can be performed and the detection of the most vulnerable points for corruption in both the trafficking and criminal justice chains can be determined. This thesis proposes to verify Bales' conclusion that corruption is an essential factor explaining and predicting THB.

This author will differentiate her approach from that of Bales in three ways: (1) by using different measures of corruption and THB; (2) by performing a cross-sectional and

²⁸ Bales, 2005:140

regional analysis within a country (different level of analysis taking into account also regional effects); (3) by applying advanced statistical methods to explain the interrelationship between corruption and THB in a quantitative way.

2.3 WORKING HYPOTHESIS: THB IS DEPENDENT ON CORRUPTION IN BRAZIL

Although each relevant approach (Lyday, PACO and Bales) recognise corruption as an important predictor of THB, their exploration of the interrelationship between both phenomena is limited and questionable due to the absence of concrete data. All three adopt a cross-country approach to the interrelationship between THB and corruption: Lyday, by correlating the CPI index with the country Tiers; PACO Networking by highlighting the most vulnerable points for corruption during the trafficking and criminal justice chains in the South-eastern Europe; and Bales by correlating TI's CPI index with estimations of THB.²⁹

The hypothesis of this work was derived from a particular point of necessity in each of the above mentioned approaches. From Lyday, there is the necessity of establishing a correlation between THB and corruption within one specific country, which has never been proven before. From PACO Networking, the necessity of highlighting the points most vulnerable to corruption in both the trafficking chain and the criminal justice chain inside a specific country; and from Bales, the need to statistically test corruption as a predictive, and therefore, causal factor for THB inside a country. As Lyday and Bales have provided first evidence that countries with relatively high overall level of perceived corruption also show relatively high propensity to THB, this study, on the contrary, follows a much more differentiated approach and focuses only on one specific country, Brazil, as a level of reference.

Brazil is considered one of the major THB source countries in the world (TIP Report, 2007; UNPF, 2006; Queiroz, 2007). Being the fifth largest country in the world with almost two hundred million inhabitants, living in several different regions with multifaceted

²⁹ The approaches of Lyday and Bales present cross-country analysis of data on corruption derived from perception indices (surveys of perceptions), such as TI's CPI index. However, this kind of macro-level data is not suitable for different level of analysis such as within a country comparisons, in keeping with Reinikka and Svensson's contention that "conceptually, macro-level determinants cannot satisfactorily explain the within-country variation of corruption" (2003:1).

cultural, political, and above all, social-economic subsystems, Brazil offers a variety of data sources that enables the researcher to analyse the interrelationship of THB and corruption in a much more differentiated way than a single cross-country comparison can ever achieve; moreover, it allows a better understanding of the causal mechanism, how, when and where corruption causes THB for the purpose of sexual exploitation. In addition, the quality of data applied in this thesis even allows performing statistical tests to establish the level of the correlation between the variables, THB and corruption. The multiple regression also establishes predictability which allows predicting the level of THB based on a certain level of corruption while controlling for other potential predicting factors. Due to the complexity of the issues involved with the interconnectedness between THB and corruption a rather general guiding hypothesis has been chosen, namely,

“THB is dependent on corruption in Brazil”

The different quantitative and qualitative aspects of this hypothesis (including the causal mechanism, strength of the dependency, categories of involvement of public officials in the THB process, and the points most vulnerable to corruption during the THB process) will be addressed in detail in Chapter III.

This hypothesis considers two key concepts: corruption and THB.

The dependency of THB on corruption and the structure of their interrelationship, will be demonstrated in two ways: with specific examples drawn from case files (which demonstrate a direct link), and with statistical analysis (which demonstrates an indirect link). The key issue of the first is one of enablement, which in fact explains causality and will be detailed below.

The indirect link is established by the statistical model by using two different and independent sources of data on both phenomena (corruption and THB). Statistical regression applied demonstrates the correlation between corruption and THB, the strength of the correlation and establishes predictability. The results of the statistical model are reinforced by the examples (illustrative cases) drawn from the case files which explore the direct linkage.

Direct Linkage

One set of data used in this thesis establishes causality between THB and corruption in five distinct contexts. In each of these at least one type of corrupt behaviour is committed by public officials during the THB process. These are called corrupt activities, which are classified by this author as being: 1) recruitment; 2) provision of false documents; 3) engagement in the sexual services of trafficked victims; 4) influence peddling; and 5) patent negligence. All five of these corrupt activities demonstrate the way corruption directly enables trafficking, establishing the dependency of THB on corruption.

Recruitment

Public officials can be identified as recruiters. Their corrupt activities facilitate THB in two primary ways. First, a public official, as a member/ representative of a public establishment, engages the public trust; as a result, his/ her activities do not, as a matter of principle, invite suspicion. Second, because public officials have privileged access to contacts and information which may in turn facilitate the practice of any criminal activity; any action by a public official on behalf of a trafficker (such as the provision of privileged information) can be considered direct facilitation of THB. Criminal possession of unique contacts and information enables traffickers to locate and exploit the weaknesses of the state in ways necessary to the conduct of criminal activities.

Provision of false documents

The provision of false documents occurs when a trafficker establishes contact with a public official in order to obtain counterfeit versions of official documents, such as identity cards or passports, which misrepresent or conceal key features of a trafficked person's real identity (such as the victim's age, in the case of trafficked minors). In this context, unless the public official and the trafficker are the same person, it is the trafficker who triggers the corrupt activity of the public official. In this case, THB provides the starting point for the corrupt activity, which follows from it causally. However, as the THB process is in this case explicitly dependent on the enabling participation of the public official, the THB process itself can still be said to be dependent on corruption.

Engagement in the sexual services of trafficked victims

The example of a public official engaging in sexual activity with trafficked minors enables THB in two ways. First, by accepting illicit sexual services, public officials who engage in such activity are providing positive reinforcement and incentive to the criminal. The mechanics of this relationship and its resulting enablement of THB are simple. If the provision of illicit sexual services to public officials is itself a form of bribery, from which the criminal receives special favour in the form of protection from law enforcement, then the public official, by engaging in this activity, is in effect receiving a reward for “looking the other way.” By accepting this type of bribe, the corrupt official provides incentives to traffickers and exploiters to continue their illicit activities (in particular, to continue catering to a “special” market – including criminal justice agents and politicians, who should otherwise engage the criminals in an exclusively investigative/prosecutorial capacity as demanded by the law). Such law enforcement “clients” guarantee the success of their criminal activity by removing the threat of punishment for criminal activity.

Secondly, the offender’s public office explicitly establishes the potential for special treatment,³⁰ either before or after the fact. Special treatment includes both non-threat of punishment (considered to take place once a bribe is accepted, when the public official removes the threat of his own preventive/punitive action) as well as protection from punishment (which takes place post-facto, when corrupt officials may use their influence to hinder both investigative and prosecutorial processes and remove the potential for punishment). Additionally, the higher a public official’s rank, the greater the certainty of this potential becomes. The special treatment afforded by politicians, persons of influence³¹ and members of the criminal justice system who become involved in criminal activity not only reflects the deep bias and inequality within a criminal justice system but also inhibits the ability of law enforcement to investigate THB, and allows criminals to act with impunity by removing the threat of punishment.

³⁰ Special treatment can range from a guarantee of confidentiality from the trafficker and/or investigating officer to lack of charges and dismissal of sanctions.

³¹ Persons of influence are generally business persons who are well known in their regions of residence for their economic standing and their personal connections to public authorities (CPMI report, 2006).

For these reasons, the conduct of a public official engaged in the sexual services can be considered a direct form of enablement of THB, a predictor of its occurrence and an incentive to trafficking.

Influence peddling

Influence peddling, or trading in influence, also functions as an enabling factor for THB by making it dependent on this kind of corrupt behaviour from public authorities. Influence peddling occurs, for example, when high-ranking authorities or persons of influence offer recruiters protection from investigation and prosecution. Often, this protection derives from the provision of illicit sexual services to these authorities and persons of influence.

Patent negligence

“Patent negligence” is known to be a strong determinant of THB (PACO Networking, 2002). Contrary to “pure negligence” which involves the unintentional omission of proper action by public official due to his/ her lack of knowledge of those circumstances which should have been observed during the commencement of his/ her official duties, patent negligence is the intentional omission of proper action by a public official who is aware of all circumstances pertaining to the commission of an illegal activity. Patent negligence occurs, for example, when a public official attempts to protect someone specific (e.g., a trafficker or, by extension, a trafficker’s clients), or when a higher-ranking public official orders a lower ranking official (who may not necessarily be a direct subordinate) to act in a manner not in accordance with his/ her duties as mandated by the law.

While patent negligence is not necessarily difficult to identify, especially in cases of international THB, it nevertheless poses considerable difficulties for investigators and prosecutors who must obtain reasonable evidence of intent – the sole factor distinguishing patent from pure negligence. However, despite the sheer difficulty of determining a public official’s “mindset” prior to the omission of duty, patent negligence is understood in this thesis to be a strong enabler/ facilitator and predictor of THB. Without this particular form of corrupt omission, THB could be more easily combated.

2.4 METHODOLOGY

This chapter describes the way the research has been conducted. Starting from the research problem (deduction of the research hypothesis from theory based on literature review), the research design characterizes the data-gathering strategy chosen, the type of data used and the respective data sources. The data is then analysed according to common qualitative methods and quantitative statistical techniques. Finally, the outcome of analysis will be presented and discussed in the following chapters.

The following table presents the conceptual framework of the thesis and summarizes the concepts, variables, data sources, analytical methods and expected outcomes.

Table 2.4.1 Conceptual Framework of the Thesis

Research Problem

**THEORY: Literature on the linkage
between THB and Corruption**

Lyday, PACO Networking, Bales



Research Hypothesis	<div> <div>THB</div> <div>←</div> <div>Corruption</div> </div>	
	Dependent Variable	Independent Variable
Measurement in absolute (individual incidents) and/or relative numbers (Rate per 100,000 Persons and Population Density):	<ul style="list-style-type: none"> Nº. of domestic THB cases Nº. of international THB cases 	<ul style="list-style-type: none"> Nº of incidents of corruption inside THB cases Nº. of incidents of corrupt behaviour of public officials on duty in municipalities (e.g. fraud related to procurements, simulated payments, phantom purchases, improper deviation of resources) Nº of answers of survey respondents towards THB-related corruption

Research Design

Data Collection Methods:	<ul style="list-style-type: none"> Existing secondary data (CPMI³² and Municipal Corruption Reports; Federal Police Official Statistics) Social Survey 	
Types of Data:	<ul style="list-style-type: none"> Cross-sectional data (27 Brazilian Federal States) Longitudinal Data (from 1990 to 2005) 	
Data Sources:	<ul style="list-style-type: none"> CPMI Report Federal Police (Official Statistics) Survey Respondents 	<ul style="list-style-type: none"> Municipal Corruption Report

³² Joint Parliamentary Commission of Inquiry ("Comissão Parlamentar Mista de Inquérito" or CPMI). Hereafter referred to as the CPMI.

Analysis

Data Analysis:	<ul style="list-style-type: none">I – Quantitative Analysis<ul style="list-style-type: none">• Descriptive Statistics (rates, ratio and percentages)• Multivariate Technique (Multiple regression and correlation)II – Qualitative Analysis<ul style="list-style-type: none">• Illustrative Cases
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Expected Outcomes

Expected Empirical Findings:	I – Confirmation of the research hypothesis (causality, strength of the correlation between THB and corruption, and predictability)
	<ul style="list-style-type: none">II – Responses to questions posed in Chapter I<ul style="list-style-type: none">• Magnitude and trends of THB and corruption in Brazil• Regional differences in rates of THB-related corruption in Brazil• Most vulnerable points for corruption during the trafficking chain• Most vulnerable points for corruption during the criminal justice chain• Main roles of public officials in the THB process• Consequences of the involvement of public officials in THB

Source: Author's elaboration

2.4.1 Research Problem: dependence of THB on corruption

The framework of the thesis has its starting point in the literature review focusing on the interconnectedness of different types of crimes, especially THB and corruption. The three main theoretical and conceptual studies dealing with the linkage between corruption and THB (Lyday, PACO Networking and Bales) were taken as the basis for the formulation of the research hypothesis, which involves two distinct concepts: THB and corruption. The purpose of the thesis is to answer the cardinal question of whether THB is dependent on corruption in Brazil. Additional qualitative and quantitative information will be provided by answering questions related to causality, trends, regional differences, the main roles of public officials in the THB process, as well as the most vulnerable points for corruption during the THB and the criminal justice chains. These topics will all be addressed in Chapter III.

In accordance with the main hypothesis the dependent variable is THB and the independent variable is corruption. THB is measured/ quantified by:

- The number of cases/ occurrences involving domestic THB
- The number of cases/ occurrences involving international THB

Corruption is measured/ quantified by:

- The number of incidents of corruption inside THB cases
- The number of incidents of corrupt behaviour of public officials on duty in municipalities (e.g. fraud related to procurements, simulated payments, phantom purchases, improper deviation of resources)
- Perception of survey respondents towards THB-related corruption

All variables will be measured and described in absolute and relative numbers. Since the study uses interval level variables, the operationalization procedure applied is counting. This procedure is used since the property of the operationalized concept is discrete (unique and individual incidents of THB and corruption).³³

This thesis uses the terms “occurrences,” “cases,” “case files” or “incidents” as synonyms.

2.4.2 Research Design

Data Collection Method³⁴

The data have been collected from various independent sources, from existing records to a social survey in keeping with Sale et al. (2002:46) who assert that “the complexity of phenomena [such as THB and corruption] requires data from a large number of perspectives.” As such, additional resources have been employed, including a social survey, to supplement the data and identify more precisely how trafficking and corruption are interrelated. In this thesis, triangulation (various methods of analysis) is used to bolster the

³³ On the procedure of operationalization of concepts, cf. Corbetta, 2003:73.

³⁴ See Kleck et al., 2006

confidence and validity of the findings (Hagan, 2003:279; Onwuegbuzie and Leech, 2005; Jupp 1989). The usage of various independent and objective sources is known to eliminate the potential for errors and/ or rival causal factors.³⁵

Types of Data

This study focuses on Brazil. The initial units of analysis are individual incidents of THB, corruption and individual perceptions towards THB-related corruption. Later, the individual data are grouped by federal states and regions. For statistical purposes (multiple regression) and comparison reasons, the unit of analysis is Brazilian federal state.

The data have both cross-sectional (27 Brazilian federal states) and longitudinal characters (from 1990 to 2005).

In order to provide also qualitative information on THB-related corruption, the study presents illustrative cases based on individual case files.

Data Sources

The data sources are existing government reports, official statistics as well as a sample of respondents to the questionnaire. The sources consist of data describing individual instances of investigated cases of corruption and THB (either separately or linked) from all 27 Brazilian federal states. As such the three sets of secondary data are all in the form of the “original data-matrix” at the individual level (individual cases or incidents of either corrupt behaviour or trafficking events) and were analysed in order to aggregate them as necessary for statistical purposes and to demonstrate regional differences (Corbetta, 2003:150). The three sets of secondary data, even with its limitations as secondary data (Corbetta, 2003:152) are nevertheless unbiased and consistent (Hagan, 2003:237).

³⁵ Considering the difficulty of obtaining “first-hand information from those who have been exploited” (Laczko, 2005:8), and considering that Brazil has already conducted a study in which case studies were reported (PESTRAF, 2002), this author has decided not to use case studies or life-story methods as the main data-gathering strategy. While such an approach would be complementary, it remains an endeavour for further long-term research. At this point, without comprehensive or more accurately representative data this approach is not possible.

Although each data set is treated independently, as detailed in its respective section, its findings are compared with those preceding it to make clear the linkages between the outcomes from each set of data. This section provides a basic overview of each data set.

- The CPMI report (a government report) consists of cross-sectional data from investigations into the overall situation of sexual offences against minors in Brazil (including domestic and international trafficking in minors).
- The Federal Police statistics is a set of longitudinal and cross-sectional data into international trafficking incidents (police incident files).
- The Municipal Corruption report comprises a set of cross-sectional and longitudinal data into corruption incidents based on audits of Brazilian municipalities (official records provided by the Federal Government).
- Questionnaire respondents: Brazilian prosecutors and law enforcement agents.

Data Analysis

The data from different sources are analysed using both quantitative and qualitative techniques. Descriptive statistics as well as multivariate analysis are applied. Some selected illustrative cases will be highlighted.³⁶

The research hypothesis will be tested in a cross-sectional perspective using time-series data from Brazilian federal states. The reason for this cross-sectional analysis is two-fold:

- 1) Firstly because a comparative study between federal states and regions facilitates the identification of regional differences (the most vulnerable federal states/ regions to THB-related corruption).
- 2) Secondly, empirical data from all Brazilian federal states can be applied for advanced statistical analysis (multiple regression and correlation). Thus, the results of the multiple regression can be used to predict future development of THB in Brazil.

³⁶ On mixing research methods (qualitative and quantitative approach, see Brannen, 2005).

In addition to the cross-sectional perspective, the longitudinal element of the study allows the identification of THB and corruption trends in Brazil.

Thus, the ways the research hypothesis will be tested are as follows:

- 1) Applying simple descriptive statistics to the data of the CPMI report to demonstrate the direct link between THB and corruption. The causal relationship is demonstrated in a qualitative analysis of the CPMI data in five types of involvement of public officials in the THB process (recruitment, provision of false documents, engagement in the sexual services of trafficked minors, influence peddling and patent negligence)
- 2) Applying multivariate analysis (multiple regression and correlation techniques³⁷) using the data from the Federal Police statistics and the Municipal Corruption report in order to demonstrate the strength of the correlation between THB and corruption as well as to establish predictability. The latter will be illustrated and reinforced by examples (illustrative cases) taken from the CPMI report
- 3) Applying simple descriptive statistics to the data from the questionnaire respondents

2.4.3 Expected Outcomes

The final part of the research shall provide definitive answers with regard to the confirmation of the research hypothesis and the topics related to it. These are trends in THB and corruption, regional differences in rates of THB-related corruption, the main roles of public officials in the THB process, as well as the most vulnerable points for corruption during the THB and the criminal justice chains.

³⁷ See Healey, 2005