
Democracy and Violence: The Colombian Paradox

Eva Irene Tuft

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Summary

This study argues that the Colombian paradox between formal democracy and endemic political violence is a direct result of the narrow polity established by elite pacts. Through an analysis of the Colombian situation and empirical evidence related to human rights violations this study considers the limitations of elite pacts as a mechanism for democratic transition and consolidation.

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Santo Domingo, March 1996

List of acromyms and abbreviations

AD M-19	<i>Alianza Democratica Movimiento 19 de Abril</i> ; Democratic Alliance of April 19
ANAPO	<i>Alianza Nacional Popular</i> ; Popular National Alliance
ANDI	<i>Asociación Nacional de Industriales</i> ; National Association of Industrialists
ANUC	<i>Asociación Nacional de Usuarios Campesinos</i> ; National Association of Peasant Users
ASFADDES	<i>Asociación de Familiares de Detenidos-Desaparecidos</i> ; Association of the Families of the Detained-Disappeared
CAJ	<i>Comisión Andina de Juristas</i> ; Andean Commission of Jurists
CEM	<i>Conferencias de Ejércitos Americanos</i> ; Conferences for American Armies
CGSB	<i>Coordinadora Guerrillera de Simón Bolívar</i> ; Simon Bolivar Guerrilla Coordination
CIDH	<i>Comisión Interamericana de Derechos Humanos</i> ; Interamerican Human Rights Commission
CINEP	<i>Centro de Investigación y Educación Popular</i> ; Center for Popular Research and Investigation
COLSINGUER	<i>Colombia sin Guerrillas</i> ; Colombia Without Guerrillas
CREDHOS	<i>Comite Regional de Derechos Humanos - Barrancabermeja</i> ; Regional Committee for Human Rights - Barrancabermeja
CRIT	<i>Consejo Regional Indígena del Tolima</i> ; Regional Council of the Indigenous of Tolima
CRS	<i>Corriente de Renovación Socialista</i> ; Movement for Socialist Renovation
CUT	<i>Central Unitaria de Trabajadores de Colombia</i> ; United Workers Center of Colombia
DANE	<i>Departamento Administrativo Nacional de Estadística</i> ; Department of National Statistics
DAS	<i>Departamento Administrativo de Seguridad</i> ; Administrative Security Department
DEA	US Drug Enforcement Agency
EAI	Enterprise for the Americas Initiative
ELN	<i>Ejército de Liberación Nacional</i> ; National Liberation Army
EPL	<i>Ejército Popular de Liberación</i> ; Popular Liberation Army
EPL	<i>Esperanza, Paz y Libertad</i> : Hope, Peace and Liberty
ESG	<i>Escola Superior de Guerra</i> ; Superior War College
FARC	<i>Fuerzas Armadas Revolucionarias de Colombia</i> ; Revolutionary

	Armed Forces of Colombia
FECODE	<i>Federación Colombiana de Educadores</i> ; Colombian Federation of Teachers
FEDECAFE	<i>Federación Nacional de Cafeteros de Colombia</i> ; National Federation of Colombian Coffee Growers
FEDEGAN	<i>Federación Nacional de Ganaderos</i> ; National Federation of Cattle Breeders
LIDERLIP	<i>Liga Internacional por los Derechos y la Liberación de los Pueblos</i> ; The International League for the 'Peoples' Rights and Liberation
M-19	<i>Movimiento 19 de Abril</i> ; Movement of April 19
MACOGUE	<i>Muerte a Comunistas y Guerrilleros</i> ; Death to Communists and Guerrillas
NAFTA	North American Free Trade Agreement
ONIC	<i>Organización Nacional Indígena de Colombia</i> ; National Organization of Indigenous Peoples of Colombia
PAM	<i>Pacto de Asistencia Militar</i> ; Military Assistance Agreement
PCC	<i>Partido Comunista de Colombia</i> ; Communist Party of Colombia
PNR	<i>Plan Nacional de Rehabilitación</i> ; National Plan for Rehabilitation
PRT	<i>Partido Revolucionario de los Trabajadores</i> ; Revolutionary Workers' Party
TIAR	<i>Tratado Interamericano de Asistencia Recíproca</i> ; Interamerican Treaty of Reciprocal Assistance
UP	<i>Unión Patriótica</i> ; Patriotic Union
USO	<i>Unión Sindical Obrera</i> ; Oil Workers Union
WOLA	Washington Office on Latin America

Colombia Political



1. Elite pacts in democratic transition and consolidation

1.1 Introduction

Following a brief experience with military rule (1953-1958) power was transferred to a civilian government through an elite pact; the 1958 *Frente Nacional* (National Front) agreement between the Liberal and Conservative parties. The National Front had a formal life of 16 years and officially expired in 1974. However, many of the pact's explicit and implicit power sharing mechanisms continue in force and still constitute the basic framework for contemporary politics in Colombia. There is, therefore, a direct and implicit relationship between the polity established by the National Front and the nature of democratic practices in Colombia.

The concept of elite pacts is a central element of theory which has evolved to explain the transition from authoritarian to democratic governance which took place in Latin America in the 1970s and 1980s. Scholars often cite Colombia as evidence that the existence of elite pacts offers the best possibility of a successful transition (Karl 1990: 9; Karl and Schmitter 1991: 281; Huntington 1991: 166; Burton, Gunther and Higley 1992: 18; Mainwaring 1992: 310). Some contend that elite pacts may, in fact, be the only mechanism for ensuring the success of a transition process as "all of the unpacted democracies existing at different times in other Latin American countries were destroyed by authoritarian reversals" (O'Donnell and Schmitter 1986: 45). Their conclusions are largely based on the characteristics of Colombia's National Front agreement and the subsequent consolidation of a liberal democratic system which has not been reversed by a reoccurrence of authoritarian intervention.

When considered within the parameters of theories related to elite pacts Colombia may be seen to take on some of the characteristics of a country which has successfully made the transition from authoritarian to democratic governance. On the surface, Colombia has avoided the political and economic instability chronic to much of Latin America. It has one of the oldest liberal democracies in the hemisphere. Elections, considered free and fair by the international community, are held on a regular basis and civilian rule has been interrupted only once during this century by a military dictatorship (1953-1958). Comprehensive human rights, extending to economic, social, cultural and environmental rights are guaranteed in the 1991 Constitution and by Colombia's adherence to international human rights instruments, and successive governments have promised full implementation of

those rights. Since the 1970s Colombia has also sustained the highest aggregate economic growth rate in Latin America. As a result of these factors, Colombia is sometimes described as one of the most stable democracies in Latin America.

However, democracy in Colombia is a paradox. The legacy of the National Front agreement is, in practice, a restricted polity characterized by extreme levels of political violence. Almost 15,000 persons were killed in political violence between 1990 and 1994, more than the total number of officially documented killings which occurred during the years of military dictatorship in Chile, Argentina, Brazil, Bolivia, Paraguay and Uruguay (*Justicia y Paz*, Vol.7, No.2, 1994, p.6-7).¹ Tens of thousands of Colombian civilians have also been the victims of torture, intimidation or other forms of gross human rights violations and at least 600,000 persons are internally displaced by armed conflict.

Political violence occurs in the context of the 40 year old armed conflict between the Colombian government and various guerrilla groups. The conflict creates the conditions and the ideological rationale for gross and systematic human rights violations committed against civilian non-combatants by agents of the Colombian state. These persons are usually members of legally constituted political or social organizations which act outside of the narrow framework of Colombia's traditional polity. Their efforts to broaden the base of political participation and build new political structures which transcend the National Front's legacy are perceived to constitute a threat to the status quo. It is these legal organizations, not the guerrillas, which are the principle target of government sponsored repression.

Using the case of Colombia, this study will demonstrate the limitations of *elite pacts* as a mechanism for democratic transition and consolidation. It will also establish that elite pacts in Colombia have directly and implicitly created the conditions which allow for the paradox between a formal liberal democracy polity and endemic political violence and human rights abuses to exist.

1.2 Colombia as a case study for testing the implications of elite pacts

Unlike much of Latin America, Colombia has never been governed for an extended period of time under a military dictatorship. As a result, it is often not

¹ A Truth Commission convened in Argentina in 1984 officially documented 9,000 victims of extra-judicial killings and forced disappearances in Argentina during the "Dirty War". However, unofficially human rights organizations claim the number is 30,000. New information released in confessions of former military officers made in April, 1995, corroborates that the actual number of deaths is significantly higher than the official record. See Christine Legrand, "End to the pact of silence" in *Guardian Weekly*, 19 March, 1995. Similar situations may exist in other countries.

discussed in literature related to the transition and consolidation of democratic governance which occurred in Latin America during the 1980s. However, Colombia provides a unique historical case study. Colombia experienced a transition from military to civilian rule in 1958 which was achieved through an elite pact mechanism; the National Front agreement between the Liberal and Conservative parties. Colombia returned to a formal system of liberal democratic governance which has not subsequently been reversed by authoritarian intervention. The system has had almost 40 years to evolve, providing an adequate time period to test theories related to democratic transition and consolidation by elite pacts against the outcomes which have been produced by the National Front.

This study will argue that elite pacts negotiated in Colombia, in the form of the 1958 National Front agreement and its legacy in Colombia's contemporary polity, have resulted in the consolidation of a restricted political system which: (i) does not meet the minimal definitions of procedural democracy often used by scholars; (ii) can only be sustained through the repression of legally constituted groups in civil society who oppose the narrow bipartisan framework left in place by the National Front; and, consequently, (iii) is characterized by endemic political violence and gross and systematic human rights violations.

Furthermore, this study will argue that the direct legacy of the National Front elite pact is a crisis of legitimacy of the Colombian state. The crisis is one of governability and the legitimacy of the institutions of the state in the eyes of civil society and it has its roots in the existence of, and interaction between: (i) the restricted nature of the formal political system and the exclusion of large sectors of the Colombian population from participation in the democratic process; (ii) growing economic disparity between rich and poor sectors of Colombian society despite decades of rapid economic growth; (iii) the breakdown of the rule of law; (iv) military autonomy in the management of central political issues which should be under civilian control, including policy related to public order and counter-insurgency; and (v) almost absolute impunity enjoyed by agents of the Colombian state who are responsible for human rights violations. The extreme levels of political violence and human rights violations are, at the same time, both a cause and a consequence of the crisis.

As elite pacts are a crucial element to understand the paradox of democracy and human rights violations in Colombia, this study will use theories which apply elite pacts as a central analytical concept to explain democratic transition and consolidation. However, this study will argue that regime transition theories cannot fully account for the Colombian paradox. This inability is found, in large part, in their limited consideration of the actors which condition the transition and consolidation processes. Transition theories tend to focus almost exclusively on interactions between elite actors. They contend that elite interactions determine the process through which the transition from authoritarian to democratic governance takes place and the characteristics of the political regime which is subsequently

consolidated. Transition theories tend, therefore, to ignore or play down the importance, dynamics and implications of: (i) interactions between elites and civil society; and, more specifically, (ii) conflicts between elites and groups in civil society as factors which condition the transition process. However, in Colombia it is precisely the interactions and conflicts between elites and groups in civil society which determined the objectives and mechanisms of the 1958 National Front elite pact.

The National Front was an elite response to *new challengers* in civil society which upset the traditional hegemony of the Liberals and Conservatives. These new challengers arose from the *silent revolutions* of profound social, economic and demographic changes which began in Colombian society during the 1930s and have since rendered historical patterns of political behaviour and control obsolete.² Confronted with the silent revolutions the pact-makers, institutionally represented by the Liberal and Conservative parties, attempted to restore their hegemony by: (i) subordinating and regaining the loyalty of the military; and (ii) demobilizing the new challengers, either by integrating them into the restored traditional bipartisan polity or through repression.

Scholars contend that the direct result of transition to democracy by pact has historically been a stable limited democracy (Karl 1990: 12; Karl and Schmitter 1991: 281; Burton, Gunther and Higley 1992: 14). The National Front's formal restrictions regarding political participation confirm this analysis in the Colombian context. Furthermore, scholars argue that pacted transitions facilitate the eventual emergence of a consolidated democracy (Burton, Gunther and Higley 1992: 14), and that, under the conditions of modern politics, explicit pacts between all politically significant actors are a virtual necessity for the consolidation of democracy (Valenzuela 1985; Karl and Schmitter 1991: 281).³ On this last point, however, this study will argue that rather than expanding political participation over time to include new groups, the original Colombian pact-makers acted with the explicit objective of sustaining their exclusive control over the political system. They explicitly excluded the majority of the population from meaningful participation in the political process.

² The *silent revolutions* refer to structural transformations which have occurred in Colombian society since the 1930s (see Chapter 3). The result has been to undermine traditional mechanisms for mobilizing political support and weaken party sectarianism. Pécaut calls this process the *silent revolutions* (Cited in Uprimny and Vargas Castaño 1990: 144).

³ These scholars define "modern politics" as including: (i) mass enfranchisement and extensive human rights; (ii) class, sectoral and professional interests are likely to be defended by specialized organizations; (iii) the armed forces possess an overwhelming superiority in the use of violence; (iv) the state has responsibilities for the regulation of the market and the redistribution of income; and (v) the economic system is tightly integrated with, and hence vulnerable to the international market.

Furthermore, this study will argue that the social and political conflict created by the exclusive National Front has necessitated the establishment of two new elite pacts in Colombia subsequent to 1958. These pacts have been established between the original civilian pact-makers and the Colombian Public Forces.⁴ The objective of these pacts is to protect the mutual "vital interests" of the participants by sustaining the polity established by the National Front in the face of growing legal and illegal opposition in civil society. The mechanisms of these pacts which constitute their structure are entrenched in the institutional and procedural framework of the Colombian political and legal systems. Transition scholars cannot fully account for the Colombian paradox because they do not consider these additional pacts which have been established between civilian and military elites.

The two new elite pacts include:

A *pact of autonomy* for the Public Forces, in particular the military. The pact grants the military *de facto* freedom in establishing the ideological framework of policy related to public order and implementation of that policy. The primary formal mechanism for the pact is the extensive use of state of emergency powers to expand the authority and jurisdiction of the Public Forces. Extraordinary legislation passed under emergency powers is frequently placed in ordinary law after the state of emergency has expired. The military's expanded authority has been accompanied by large budget increases and the creation of parallel military structures, in the form of paramilitary organizations, which enhance the military's operational capability but are not formally part of the Public Forces and, therefore, are not accountable to any democratic civilian oversight.

A *pact of impunity* under which agents of the state responsible for human rights violations have not been held accountable for their actions through the due process of law. The principle formal mechanism for the pact of impunity is the Colombian *fuero militar* (military justice system). Under the Colombian constitutions (Article 221 of the 1886 constitution and Article 226 of the 1991 constitution), any crime committed by a member of the Public Forces, including any form of human rights violation, is considered an "act of service" and prosecuted under the *código penal militar* (military penal code). It is estimated that the military system has a conviction rate of between one and three percent in cases of alleged human rights violations, meaning that impunity is effectively absolute.

⁴ Article 216 of the Colombian Constitution of 1991 defines the *Fuerzas Públicas* (Public Forces) as integrating the *Fuerzas Armadas de Colombia* (Armed Forces of Colombia), the *Policía Nacional* (National Police) and the various intelligence agencies operating under those agencies. The terms Public Forces and the military will be used interchangeably in this study.

With the pact of democracy (the National Front agreement), the existence of the pacts of autonomy and impunity allow the paradox between formal liberal democracy and political violence to exist. Finally, scholars largely overlook the fact that elite pacts and accommodation have been used extensively throughout Colombian history. The National Front is, therefore, only unique in the sense that it formally institutionalized the exclusive dominance of the two traditional parties in the constitution and legal system. Previously, elite pacts existed as "conversations between gentlemen". The National Front and its legacy in Colombia's contemporary democracy can, therefore, only be understood in an historical context.

1.3 Defining democracy

A definition of democracy is required to permit a comparison between theory and the reality of the practice of democracy in Colombia. Western scholars often use Robert A. Dahl's classical definition of procedural democracy or *polyarchy*.⁵ According to Dahl, democracy is a system of government that meets three essential conditions: (i) meaningful and extensive competition among individuals and organized groups, including political parties and interest groups, for government power; (ii) a high level of political participation in the selection of leaders and policies, through regular and fair elections. No major (adult) social group is excluded from the process; (iii) the existence of civil and political liberties, including freedom of expression, freedom of the press, freedom to join and form organizations, which are sufficient to ensure the integrity of political competition and participation (Dahl 1971: 3-29).

Terry Lynn Karl provides a similar definition of democracy as "a set of institutions that permit the entire adult population to act as citizens by choosing their leading decision makers in competitive, fair, and regularly scheduled elections which are held in the context of the rule of law (and) guarantees for political freedom...". Seen in this context, "democracy is a political concept involving several dimensions: (i) contestation over policy and political competition for office; (ii) participation of the citizenry through partisan, associational, and other forms of collective action; (iii) accountability of rulers to the ruled through mechanisms of representation and the rule of law (Karl 1990: 2).

In addition, scholars focusing on Latin America often stress civilian control over the military as a defining element of democracy. Dahl explicitly states that "polyarchy is, of course, impossible unless the military is sufficiently depoliticized to permit civilian rule (Dahl 1971: 50). Alfred Stephan (1988) also emphasizes

⁵ The term *polyarchy* is based on Joseph Schumpeter's definition of procedural democracy as a system in which the voters may influence the policy of their country by voting for freely competing candidates representing real policy alternatives (Schumpeter 1965: 269).

civilian control over the military and Karl refers to civilian control over the military and "limited military prerogatives" as the fourth of her defining elements (Karl 1990: 2). These definitions of democracy are generally used by scholars working with theories related to democratic transition and consolidation, including O'Donnell, Schmitter and Whitehead (1986); Diamond, Linz and Lipset (1989); Karl and Schmitter (1991); Burton, Gunther and Higley (1992); and Mainwaring, O'Donnell and Valenzuela (1992).

This study will consider that the defining elements of democracy are symbiotically linked to each other and that the absence of one element can undermine the other elements. The defining elements of democracy must, therefore, be approached as a whole and understood in relation to each other. Dividing countries into categories and giving them "scores" based on their adherence to some defining elements while others are absent does not seem to have very much real meaning.⁶

The definition of democracy provided by Dahl and Karl is based on the Western experience of liberal democracy and focuses on the procedural aspects of democratic governance. Scholars using the procedural definitions of democracy argue that economic and social dimensions must be kept conceptually distinct from the political definitions of democracy. If not, they maintain, there is no way to analyze how variations occurring in the political regime are related to variations in these other dimensions (Diamond, Linz and Lipset 1989: xvi).

Many scholars, especially those from the South,⁷ have criticized procedural minimalist definitions as incomplete. For example, they often emphasize economic factors, including the distribution of income, which effect the physical well being of persons, the ability of disadvantaged groups to participate in the political process and, therefore, the real exercise of power.⁸ In this context, many argue that the transition to democracy in Latin America brought no change in the underlying impediments to democratic governance, including "racism, repression of labour, failure to provide the majority of the population with a decent standard of living and/or the opportunity for social mobility and the high concentration of wealth and income in the hands of a tiny minority" (Loveman 1994: 113). Under conditions of impoverishment O'Donnell points out that "if one finds a rather low percentage of the population enjoying the rights and guarantees established by a formally democratic constitution, then the democratic character of the case is in

⁶ Numerous attempts have been made to codify and quantify the existence of democracy across political systems. Among the best known is Raymond Gastil *Freedom in the World: Political Rights and Civil Liberties*, published since 1973 by Greenwood Press and since 1988 by University Press of America. Also see Charles Humana. 1986. *World Human Rights Guide*. New York: Facts on File.

⁷ I use the term South to refer to what traditionally has been called the Third World. This term is commonly used by scholars from Latin America.

⁸ See Amin 1991; Palacio 1990; Jonas and Stein 1990; Petras and Morley 1992.

doubt" (O'Donnell 1995: 24).

It is beyond the scope of this study to enter the theoretical discussion of the relationship between economic policies and performance, democracy, and the violation of civil and political human rights. However, this study will argue that economic disparity is a major cause of social conflict in Colombia. Therefore, it is necessary to consider economic, social and cultural human rights insofar as they relate to the conflict dimensions of the democratic consolidation process. In the absence of a scholarly framework for analysis, this study will use the economic, social and cultural human rights guarantees found in the Colombian Constitution of 1991 and Colombia's obligations under international human rights instruments. These guarantees are understood to form the legal framework within which Colombia's democratic institutions are obligated to conduct policy. The systematic denial of these rights for the majority of the population has implications for the political system in that organized demands in civil society for broader political participation are centered around demands for better living conditions. Consequently, even a procedural minimalist definition of democracy must be closely linked to broader economic and social human rights.

1.4 Two transitions to democracy

Having established the defining elements of democracy this study will now discuss the conventional wisdom which considers that elite pacts offer the best possibility for democratic transition and consolidation. O'Donnell contends that change from authoritarian rule to a democratic governance requires two distinct transitions. The first transition involves removing the previous authoritarian regime and establishing a democratic government. The second transition is the consolidation of democratic institutions and values (O'Donnell 1992: 18). In a similar vein, Valenzuela notes that, after the first transition to democratic governance has been completed, the second transition involves both the elimination of residues of the old system that are incompatible with the workings of a democratic regime and the building of new institutions that reinforce the democratic rules of the game (Valenzuela 1992: 71). Przeworski and Mainwaring also distinguish between the extrication of authoritarian rule and the constitution of a democratic regime (Przeworski 1992: 116-126; Mainwaring 1992: 296).⁹ Literature related to democratic transition and consolidation can, therefore, be understood as two generations of debate.

⁹ A democratic regime is a broader concept than simply government. It involves the institutionalization of democratic rules, implicitly meaning that such rules are widely accepted among the major actors in the political system (Mainwaring 1992: 296). According to Przeworski, democratization of governments concerns institutions. Democratization of regimes concerns the broader relationship between state institutions and civil society (Przeworski 1992: 123).

"Transition" refers to the interval between one political regime and another. Regime change can begin when incumbent authoritarian leaders permit an increase in civil rights enjoyed by individuals and groups. The process of incremental extension of civil liberties and political rights is referred to as liberalization (O'Donnell and Schmitter Vol. 4, 1986: 7). Because of the highly fluid, reversible, and thus inherently uncertain nature of the transition process, structural conditions are treated as general parameters or constraints rather than as determinants of action. "[M]acrostructural factors are still "there", ... but even those meditations are looser, and their impacts more indeterminate, than in normal circumstances" (O'Donnell and Schmitter Vol. 4, 1986: 5). The possibilities for liberalization, therefore, depend more on the strategic dynamics and choices within and between the regime and opposition than on structural factors.

"Democratization" is the process whereby "the rules and procedures of citizenship are either applied to political institutions previously governed by other non-democratic principles, or expanded to include persons not previously enjoying such rights and obligations, ... or extended to cover issues and institutions not previously subjected to citizen participation" (O'Donnell and Schmitter Vol. 4, 1986: 8). Democratization or democratic consolidation deals with the rights and obligations of the citizenship and the accountability of the rulers. The authors emphasize that the two processes are distinct, the transition process is inherently uncertain, and successful democratic consolidation does not implicitly follow from a successful transition. Both processes are considered reversible by authoritarian intervention (O'Donnell and Schmitter Vol. 4, 1986: 8).

1.4.1 The importance of elite pacts in the first transition to democracy

In 1979, over two-thirds of the people of Latin America were living under military rule. By 1993, not a single military regime remained in Central or South America or the Spanish-speaking Caribbean. As the result of the demise of military regimes scholars widely claimed that the process of democratization in Latin America had begun.

Transitions to Civilian Government in Latin America 1958-1993

<i>Colombia</i>	1958	El Salvador	1984
Paraguay	1993	Argentina	1983
Chile	1990	Bolivia	1982
Guatemala	1986	Honduras	1982
Brazil	1985	Perú	1980
Uruguay	1984	Ecuador	1979

Source: Loveman (1994: 106)

Beyond O'Donnell, Schmitter and Whitehead (1986), there is a growing body of theoretical literature which discusses the relationship between the modes of transition from authoritarian regimes to elected civilian governments, the characteristics of the government which emerges from the transition process and, therefore, the prospects for consolidating a democratic system of government.¹⁰ To date, scholars analyzing the process of transition to democratic government have focused mainly on relationship between the issues of; (i) why authoritarian regimes became enviable and subsequently broke down; (ii) the process through which the transition to democracy took place; and (iii) the effect of transition process in determining the characteristics of the resulting democratic government.

Karl and Schmitter identify four possible processes through which the transition from authoritarian to democratic rule can be achieved: (i) transition by *pact* where elites agree on a multilateral compromise among themselves; (ii) by *imposition* where elites use unilateral and effective force against a resistant incumbent to achieve a regime change; (iii) by *reform* where broad sectors in civil society mobilize from below and impose a compromised outcome without resorting to violence; and (iv) by *revolution* when the population rise up in arms and defeat the previous authoritarian rulers militarily (Karl 1990: 8-9; Karl and Schmitter 1991: 274-275).

Latin America has experienced all four modes of transition in recent decades. However, scholars argue that only processes of transition achieved through elite pacts have resulted in stable democracies. Higley and Gunther contend that, in countries with long records of political instability and authoritarian rule, distinctive elite transformation, carried out by the elites themselves, constitute the main and possibly the only route to democratic consolidation. For consolidation to occur, they argue, elites which had previously been disunified must become consensually unified regarding the basic procedures and norms by which politics will henceforth be played (Higley and Gunther 1992: xi). O'Donnell and Schmitter note that two of the three Latin American democracies that survived the wave of military coups and authoritarian regimes of the 1960s and 1970s, Colombia and Venezuela, originated in elite pacts (O'Donnell and Schmitter Vol. 4, 1986: 45).¹¹ Therefore, there appears to be a consensus regarding (i) the importance of elite interaction and decision making in the transition process itself and (ii) the importance of pacts

¹⁰ The most comprehensive analysis of the process of transition from authoritarian rule has been carried out in the four volume work of O'Donnell, Schmitter and Whitehead *Transition From Authoritarian Rule: Prospects for Democracy* (1986). In addition, see Malloy and Seligson (1987); Diamond, Linz and Lipset (1989); Karl and Schmitter (1991); Mainwaring, O'Donnell and Valenzuela (1992); Higley and Gunther (1992).

¹¹ The current situation in Venezuela is unstable. In response to economic reforms and social unrest, the military staged a coup attempt in 1989 and two attempts in 1992. Rumors of an imminent coup are widespread in the wake of the 1995 economic crisis and banking sector collapse.

between elites actors as dominant mechanism for establishing democratic government.

Based on the work of various scholars, elite pacts can be said to have the following characteristics: (i) pacts are negotiated compromises in which contending forces agree not to threaten each other's "vital interests" (O'Donnell and Schmitter Vol.4, 1986: 38). Sartori calls this "politics-as-bargaining" rather than "politics-as-war" (Sartori 1987: 224-26). Pacts are only successful when they include all potentially threatening interests (Karl and Schmitter 1991: 10); (ii) elite groups maintain some or all of their previous influence in the new dynamic of power (Karl and Schmitter 1991: 10); (iii) the compromise and power sharing arrangement includes both pre-existing traditional elites and new challengers (Karl 1986: 198); (iv) pacts serve to ensure that the new polity will survive. Despite their inclusionary nature they are intended to restrict the scope of representation as a guarantee to the traditional dominant classes that their vital interests will be respected (Karl 1990: 11-12; Karl and Schmitter 1991: 281); (v) decisions made by elite actors respond to, and are conditioned by, socioeconomic structures and political institutions which are already present. These conditioning factors can either enhance or restrict the options available to the political actors attempting to construct democracy (Karl 1990: 6);¹² (vi) pacts are a series of accords that are interlocking and depend upon each other. They include an agreement between the military and civilians over the conditions for establishing civilian rule, between political parties to compete under the new rules of governance, and a "social contract" between state agencies, business associations and trade unions regarding property rights, market arrangements and the distribution of benefits (O'Donnell and Schmitter Vol. 4, 1986: 38-47; Karl and Schmitter 1991: 10; O'Donnell 1992: 26); (vii) while they are ultimately both substantive (concerning the main tenets of policy) and procedural (concerning the rules of policy-making), pacts initially emphasize rule-making because "bargaining about bargaining" is the first and most important stage in the process of compromise (Karl and Schmitter 1991: 10).

Some scholars argue that pact-making among elites results in the construction of democracy by antidemocratic means. In this sense, elite pacts limit the degree of uncertainty facing all actors by establishing clear parameters for political and economic activity. Clear rules for the transition process are an essential element

¹² For example, based on the work of Barrington Moore (1966) scholars seem to agree that the absence of a strong landowner elite engaged in labour-repressive agriculture enhances the prospects for a political democracy. Karl demonstrates that the emergence of Venezuela's petroleum sector as the country's leading source of foreign exchange created the conditions for the dismantling of the landowner elite and, subsequently, the conditions for the breakdown of the military rule. Elite actors involved in the transition to civilian rule in Venezuela in 1958 were, therefore, not confronted or restrained by a powerful antidemocratic rural elite (Karl 1986: 196-219).

of successful democratization. However, at the same time, negotiations and compromises which reconcile the interests of elites can institutionalize a conservative bias into the resulting polity, creating a new status quo which restricts further progress toward political, social and economic democratization (O'Donnell and Schmitter Vol. 4, 1986: 38; Karl 1986: 198; Karl and Schmitter 1991: 281).¹³ Karl notes that pacts "[a]re anti-democratic mechanisms, bargained by elites, which seek to create a deliberate socioeconomic and political contract that demobilizes emerging mass actors while delineating the extent to which all actors can participate or wield power in the future. They may accomplish this task by restricting contestation (as Colombian parties did in 1958 by agreeing to alternate in power regardless of the outcome of elections), restricting the policy agenda itself (as Venezuelan parties did in 1958 by agreeing to implement the same economic program), or by restricting the franchise (as Chileans did beginning with the electoral law of 1874). Regardless of which strategic option is chosen, the net effect of these options is the same: the nature and parameters of the initial democracy that results is markedly circumscribed" (Karl 1990: 11-12).

Many scholars appear to either ignore the antidemocratic nature of pacts or regard it as a unfortunate but necessary requirement to ensure transition. Where the antidemocratic nature of pacts is acknowledged, scholars appear to assume that at least some participants in the transition process are acting in good faith and are intent on establishing the basis for a consolidated democracy. They contend that political participation will be expanded over time to include other sectors of civil society. Mainwaring argues that democracy has not succeeded unless political elites were committed to it as a first choice of regime type. Furthermore, the outstanding distinctive feature which explains why the oldest democracies in Latin America are found in Costa Rica, Venezuela, and Colombia is the commitment of political elites to establishing and maintaining a polyarchy. In all three countries, after periods of bitter fighting, political elites realized that for survival they needed to compromise and construct an institutional system that placed preserving democracy above immediate partisan objectives. They have continuously reaffirmed this commitment to preserving democracy. This elite commitment and the resulting institutional arrangement made democracy possible despite formidable obstacles (Mainwaring 1992: 310). Karl (1986a), on the other hand, argues that political elites might view democracy as a means of realizing other objectives. Democracy then becomes an instrumental means of securing the political elites' interests.

For the purpose of this study it is important to underline two factors. Firstly, representatives from Colombia's two traditional parties dominated the negotiations which led to the establishment of the National Front in 1958. No *new civilian*

¹³ The same scholars, nevertheless, argue that transition by pact is the transition that most likely leads to political democracy.

challenger was present. Therefore, the pact was not a compromise and powersharing agreement which included both pre-existing traditional elites and new challengers. Secondly, while the agreement included a pact between the military and civilian elites over the conditions for establishing civilian rule, the pact can not be considered a "social contract" where, for example, trade unions were included. It was, therefore, an exclusive pact defined by the traditional elites alone. Rather than characterizing the Colombian transition as a compromised pact, the National Front was *imposed* by traditional elites to secure their vital interests.

1.4.2 The second transition of consolidating democracy

The process of transition from authoritarian to democratic governance in Latin America took place primarily during the decade of the 1980s. Subsequently, some scholars have shifted their focus to study the second generation of theory related to democratic transition; the process of consolidating democratic regimes.

Theory related to the process of democratic consolidation in Latin America represents a new field of study to which relatively few scholars have thus far dedicated themselves. The early literature on the process of consolidation is characteristically more pessimistic than the literature on the first transition from authoritarian rule. Also, there has been a broadening of the conceptual field. The widespread reliance on strategic choice models has given way to theories that stress economic, social-structural, and institutional factors which fall within the discussion of more substantive definitions of democracy. This added complexity, together with the evolving nature of literature, makes an assessment of the state of the debate on democratic consolidation more difficult than in the case of the transition from authoritarian rule.

There appears to be an evolving consensus among scholars on two points. Firstly, democratic consolidation requires the elimination of residues of the old system that are incompatible with the workings of a democratic regime and the building of new institutions and practices which reinforce democratic values. Secondly, the definition of a consolidated democracy draws on the existing minimal procedural definition of democracy. A country can be said to have a consolidated democracy when all of the major actors accept these minimal definitions of the rules of the democratic game (O'Donnell 1992: 48-49; Valenzuela 1992: 60-62, 70-71).

At the same time, a series of central issues where no scholarly consensus yet exists also appears to be emerging. For the purpose of this study, these scholars can be placed into two different groups. Scholars in the first group play down the linkage between the mode of transition and issues related to the process of consolidation. For example, Przeworski (1992) states that where a country is heading, not where it is coming from, is the most important consideration. Actors shape outcomes through their choices in a way that is not necessarily influenced

by historical legacies. Therefore, by themselves neither the old regime nor the mode of transition determines how democratic consolidation occurs.

To the contrary, a second group of scholars maintains that there is a direct relationship between the mode of transition and the process of consolidation itself. This relationship is implicit and has significant implications in determining: (i) the characteristics of the government which is consolidated following the transition from authoritarian rule; (ii) the issues facing the new government; and (iii) the extent to which actors who held power under the previous system may condition or restrict the actions of the new civilian government and, therefore, the building of democratic institutions and practices. In addition, although democratic consolidation is a new process, the actors and the structures are strongly influenced by history (O'Donnell 1992, 1995; Karl 1990; Karl and Schmitter 1991).

Among the scholars of the second group there no longer appears to be a consensus on which mode of transition holds the best prospects for democratic consolidation. As in the past, Burton, Gunther and Higley continue to argue that elite agreements are the main, and possibly the only, route to democratic consolidation in states with a long record of political instability and/or authoritarian rule (Burton, Gunther and Higley 1992: xi). They emphasize the importance of institutionalizing procedures, within an elite settlement, which serve to stabilize the political environment by establishing a procedural consensus, and institutionalizing behavioral norms which restrain expressions of conflict and encourage patterns of elite interaction as the key elements of a successful consolidation process (Burton, Gunther and Higley 1992: 22-23).

In previous work, O'Donnell argued that transition by elite pact offered the best prospects for democratic consolidation (O'Donnell and Schmitter Vol. 4, 1986: 37). However, in more recent writings he suggests that elite pacts may leave the power of former authoritarian actors relatively intact. Among the obstacles to the process of consolidation identified by O'Donnell are the persistence of "decidedly authoritarian actors who control important resources of power; a widespread attitude among important actors of neutrality or indifference regarding the type of political regime put in place; the prevalence in many social spheres of profoundly authoritarian patterns of domination ... [and] the consequences of a deep economic crisis and the aggravation of social inequalities" (O'Donnell 1992:19). In this situation new democracies may experience a "slow death" where civilian authorities remain subordinate to the military's power. Slow death is "a gradual suffocation ... accomplished through the gradual erosion of the freedoms, guarantees and processes that are vital to democracy ... These are periods, usually measured in years, of feeble and decaying democratization". Therefore, in the new polity "... some features of democracy mingle with a strong tincture of surviving or revived authoritarianism" (O'Donnell 1995: 27). O'Donnell and Schmitter previously called this form of government a *democradura* or a "civilian

government with military sovereignty" (O'Donnell and Schmitter Vol. 4, 1986: 41).

O'Donnell notes that the high degree of continuity of members of the former Brazilian bureaucratic-authoritarian regime in the current system presents a serious obstacle to democratic consolidation. O'Donnell also argues that previous patterns of political behaviour may accompany the continued presence of these actors. Prior to the coup of 1964 "the predominant style of doing politics", consisted of "conversations among gentlemen"¹⁴ where the relationship between classes were characterized as clientelistic. Within the state apparatus, relations are based on the distribution or appropriation of sinecures, and politicians exchange support and "favours" for the interests which they embody. This oligarchical style of doing politics has not disappeared with the transition to democracy (O'Donnell 1992: 34-37).

Much of the insight into the characteristics of post-transition governance in Latin America comes from scholars outside of the elite pact related schools of thought. Loveman classifies the form of governance which has been consolidated in many Latin American countries as "protected democracy".¹⁵ In this context the military continues to serve as the "guarantor" of the security of the nation. The actions of persons and groups in civil society which, in the opinion of the military, threaten the nation's transcendent "permanent interests" or "common good" are not tolerated and continue to be subject to repression. This may occur even if such actions are formally legal. Formal compliance with democratic procedures, therefore, masks the permanent threat of "veto by the guardians's sword" (Loveman 1994: 108-110).

As with O'Donnell, Loveman argues that the mode of transition to civilian rule may leave former authoritarian actors with significant residual power. He points out that the mechanisms for perpetuating that power are often entrenched in the very constitutions, legal systems and democratic institutions and practices on which new democracies are founded. Entrenching anti-democratic mechanisms in the new polity usually occurs as a condition of transfer demanded by authoritarian actors to guarantee their continued influence (Loveman 1994: 114-119).

¹⁴ It is not accidental that this expression is of Colombian origin. See Alexander Wilde, "Conversations Among Gentlemen: Oligarchical Democracy in Colombia". In Juan Linz and Alfred Stephan (eds.), *The Breakdown of Democratic Regimes: Latin America* (1978).

¹⁵ The idea that democracy must be protected against itself by providing for the suspension of civil liberties and rights, and for the right of the executive and the armed forces to exercise "extraordinary powers", date from 1811-1825, when the first proto-constitutions and republican charters were established in Europe. Protected democracy is a particular *institutional arrangement* and it is not uniquely to Latin America. It emerged from the French revolution and was subsequently adopted in France and elsewhere in Europe as well as in post-colonial Africa and parts of Asia (Loveman 1994: Note 12).

Chilean scholar, Manuel Antonio Garretón, writes that transitions to civilian rule in Latin America usually took place within the institutional framework established by the former authoritarian regime. New civilian actors were forced to work from within the framework in an attempt to democratize these existing institutions. The result, according to Garretón, has been the consolidation of "incomplete democracies, a regime basically democratic but riddled with inherited authoritarian enclaves: nondemocratic institutions, unresolved human rights problems, and social actors not willing to play by democratic rules" (Garretón 1995: 147).

Karl anticipated similar problems when she hypothesized that the phases of transition or early consolidation may involve significant trade-offs between some form of political democracy, on the one hand, and equity, on the other. The new democracies may be unable to carry out substantive reforms that address the problems of poverty and unequal distribution that continue to characterize the continent. They would then "become the victims of their successful consolidation, and the democratic transitions of the 1980s that survive could prove to be the "frozen" democracies of the 1990s" (Karl 1990: 13). O'Donnell (1992, 1995), Mainwaring (1992), Loveman (1994) and others also argue that deep and aggravated economic and social inequalities undermine the prospects for democratic consolidation.¹⁶

1.5 Pacts of autonomy and pacts of impunity

Historian Ricardo Peñaranda writes "democracy and violence in Colombia have coexisted for such a long time that the two phenomena have paradoxically become two faces of the same coin ... making Colombia one of the most convulsed societies in the world" (Peñaranda 1992: 294). As stated in Chapter 1.2, this study argues that contemporary political violence in Colombia is a direct legacy of the restricted polity established by the 1958 National Front elite pact. Central to the contradiction of democracy and violence is the relationship between the civilian elites and the Public Forces.

¹⁶ During the decade of transition to democracy, minimum urban salaries, earned by over half the continent's labour force, fell by 74 percent in Perú, 58 percent in Ecuador, 50 percent in Mexico, 30 percent in Brazil, and 21 percent in Chile. The income-gap between rich and poor has widened, unemployment has increased and the social sector spending has declined by more than 50 percent (Rosenthal 1990). In 1991, the United Nations Economic Commission for Latin America, found that 44 percent of the continent's population, 183 million persons, were living below the poverty line, an increase of 112 million persons over 1970. Almost half that number, or 88 million persons, were characterized as destitute or living in extreme poverty. A later report, done by UNICEF (1993) concluded that 48 percent of Latin Americans were living below the poverty line. For this reason the decade of democratization has also been called the "lost decade".

The Colombian Public Forces have been *subordinate to civilian authority* throughout Colombian history. The subordination of the military to civilian authority was institutionalized in the National Front pact and continues to the present day (Blair Trujillo 1993: 81-84; Bustamante 1989: 20-21; Restrepo 1992: 287-288; Wilde 1978: 58-59; Hartlyn 1988: 58; Uprimny and Vargas Castaño 1990: 151-152). Subordination occurs *de jure*, within the constitutional and legal framework of Colombia's democratic institutions, and *de facto* in the actual practice of the relationship between dominant factions of the bipartisan civilian elite and the military.¹⁷

At the same time, the National Front also institutionalized a fundamental redefinition of the role of the military establishment in Colombian politics, including the relationship between the military and: (i) the civilian leadership of the Liberal and Conservative parties; (ii) civil society itself. The agreement created a new axis of civilian elite-Public Forces alliance based on the protection of common interests in the face of perceived threats from new challengers in civil society. Within this new axis of alliance the military renounced any previous partisan identity and "became the guarantors of the rules of the political game as defined by the National Front, thus assuring the dominance of the Liberal and Conservative parties" (Bustamante 1989: 20).

Sustaining the civilian elite-military relationship and the role of the military as "guarantors" of the National Front polity has required the negotiation of two new elite pacts since the 1970s; (i) a *pact of autonomy* which allows the military to protect common interests defined through the mechanisms of the civilian elite-Public Forces alliance; and (ii) a *pact of impunity* for agents of the state alleged to be responsible for gross and systematic human rights violations. The pacts and their mechanisms are institutionalized in Colombia's constitution, legal system and democratic institutions which are the legacy of the National Front.

This study argues that it is precisely the pacts of autonomy and impunity which allow the paradox between democracy and violence in Colombia to exist. The two new elite pacts are fundamentally *anti-democratic*. They are based in and reinforce the anti-democratic characteristics of the original National Front elite pact. The pacts of autonomy and impunity are also symbiotically related; an official state policy which results in high levels of human rights violations also requires that agents of the state be shielded from the due process of law (LIDERLIP 1991: 25-55).

¹⁷ Chapter 3 will argue that military subordination was a characteristic of the coup d'état of 1953 and the regime of General Gustavo Rojas Pinilla (1953-1957). General Rojas Pinilla was "thrust into power" in 1953 by civilian elites, he was removed from power in 1957 by those same elites and Rojas Pinilla did not have a base of power independent of civilian politicians (Hartlyn 1988: 48; Bustamante 1989: 20; Blair Trujillo: 168-169; 81).

The Colombian situation is unique in Latin America, largely as a result of the dynamics of the civilian elite-Public Forces alliance. However, comparisons can be drawn with other Latin American countries where the military has retained *de facto* autonomy despite the formal transfer of power from authoritarian to civilian governance. These comparisons exist primarily in the analysis of the institutional mechanisms through which autonomy and impunity are achieved. This study will argue that extending anti-democratic characteristics of former authoritarian governance into the new civilian polity compromises the democratic value of post-transition governments throughout Latin America. Consequently, "gaps and weaknesses in the regimes' democracy affect the totality of social life and make it difficult for social and political actors to emerge and express their alternative proposals" (Garretón 1995: 156).

1.5.1 Pacts of autonomy

Loveman maintains that "nowhere in Latin America did the transition to elected civilian government eliminate the principal constitutional, juridical and political impediments to consolidating civilian controlled constitutional democracy" (Loveman 1994: 116). Former authoritarian actors retain considerable power and autonomy after the transition process. Importantly, this situation is neither temporary nor transitory as assumed by transition theorists and elite pact models described in Chapter 1.4. Rather, the mechanisms which guarantee the continued autonomy of the military are institutionalized in the constitutional, legal and procedural framework of the post-transition democratic polity.

Mechanisms found in new democratic regimes throughout Latin America which institutionalize the power of former authoritarian actors within the post-transition polity include:

(i) regimes of exception as a basis element of post-transition constitutions in Latin America.¹⁸ In most countries, the constitutions under which new civilian regimes were formed were written during the period of military dictatorship and either

¹⁸ Regimes of exception are constitutional and statutory provisions that permit the temporary reorganization or redefinition of governmental authority and procedures for the explicit purpose of dealing with an emergency situation, which may include war, natural disasters, epidemics, economic "emergencies", rebellions, strikes and civil war. The most typical regimes of exception involves either the partial or complete suspension of civil liberties and rights, an expansion of the president's decree power, delegation by the congress of its legislative authority to the executive, a total suspension of the constitution for the duration of the emergency, and the expansion of military jurisdiction over civilian populations (Loveman 1994: Note 31).

reaffirm or broaden regimes implemented by military authorities;¹⁹

(ii) constitutional provisions which effectively establish the military as a "fourth branch of the government" and limit Presidential and Congressional oversight of military institutions and budgets;

(iii) legislation related to internal security which criminalizes certain forms of political opposition. The legislation typically creates special legal jurisdiction for the military related to "crimes against the state" and extends military jurisdiction over civilians. In this situation the military continues to define the ideological basis of "internal security" after the initial transition process;

(iv) formal representation of the military in civilian policy making (Loveman 1994: 120-125; McSherry 1992: 466-469; Garretón 1995: 153-155).

These mechanisms constitute an effort on the part of former authoritarian actors to institutionalize their power and extend that power into the future. Consequently, "the military everywhere reserved residual sovereignty and ... civilian politicians accepted the reality of military guardianship" (Loveman 1994: 117). According to Garretón "as long as the transition remains incomplete, the *quality* (his emphasis) of democracy will remain poor," resulting in a democratic "situation" rather than a democratic "regime" (Garretón 1995: 151-153).

In addition, former military dictatorships won a significant political victory during their terms in office by: (i) eliminating left and center-left political opposition, either through outlawing political organizations and/or physically eliminating opposition forces through human rights violations; and (ii) limiting competition in post-transition elections by restricting political participation. By removing the political opposition authoritarian regimes implicitly restricted future democratic participation and created the conditions which would allowed for a "safe" transition to civilian rule. General Augusto Pinochet of Chile called this victory *misión cumplida* (mission accomplished) (Loveman 1994: 123).

Colombia is a variation on the situation in the rest of Latin America. Similar mechanisms have been used to establish military autonomy, including: (i) the state of exception provisions of the Constitutions of 1886 (Article 121) and 1991 (Articles 212- 213); (ii) the habitual use of state of emergency powers since 1948 to repress legal opposition in civil society; (iii) making permanent state of exception decrees related to internal security by placing them into common law

¹⁹ Constitutions written by military regimes under which post-transition democratic governance has been consolidated include: Bolivia 1967; Brazil 1988; Chile 1980; Ecuador 1978; El Salvador 1983; Guatemala 1985; Honduras 1982; Panamá 1983; Paraguay 1992; Perú 1979; and Uruguay 1967 (Loveman 1994: 127).

after the period of exception has expired. The practice makes state of emergency powers a permanent feature of the legal system under periods of normal constitutional governance; and (iv) constitutional, legislative and *de facto* practices which give the High Command of the Public Forces independence over the management of those institutions.

However, this study will argue that two factors distinguish Colombia from other Latin American countries: (i) the dynamics of the relationship between the civilian government and the Public Forces. Since 1958 the civilian government and the military have acted *in alliance* rather than in competition. Through this alliance, mutual interests are protected in the face of perceived threats arising from new challengers in civil society. Therefore, autonomy is granted to the military by way of civilian power as part of a consensual relationship rather than through cohesion or threat. Autonomy is exercised within the parameters of the civilian elite-Public Forces alliance and is tolerated by the civilian government insofar as the military acts as the guarantor of the political system (Wilde 1978: 61-62; Bustamante 1989 20-21; Blair Trujillo 1993: 81-83, 183-185; Uprimny and Vargas Castaño 1990: 151-152);²⁰ and (ii) the Colombian military has a much more narrow self-definition of its political role than other military establishments in Latin America. Since 1958 it has been concerned primarily with internal security and has not been involved in other areas of governance. For example, the Colombian military has never aspired to managing state economic policy as was the case in countries like Brazil, Chile and Argentina (Blair Trujillo 1993: 110, 113).

The narrow polity established by the National Front has generated growing social conflict since the 1970s. Increasingly mutually held civilian and military elite interests are threatened by "all those who express dissatisfaction with the political economic, and social situation or policies of the government, ... or who are regarded as supporting the guerrillas in one way or another" (UN doc. E/CN.4/1995/111 para.25). In the face of growing opposition from outside the traditional bipartisan framework the civilian government is increasingly dependent on the Public Forces to maintain the political system. Within this dynamic the parties, "the army and the National Front needed each other" (Wilde 1978: 61).

As a result, successive Colombian governments since 1958 have allocated growing

²⁰ This is not to imply that either military or civilian elites are monolithic blocks. Since 1958, dominant factions in the military establishment have allied themselves with factions within the civilian elites of both parties which are sympathetic to the military's internally generated security doctrines. This has implicitly resulted in conflicts between the military and non dominant civilian factions, particularly related to peace negotiations with guerrilla groups. However, the military acts within the parameters of its alliance with the civilian elites and the limits established by the dominant factions of those elites. The military has not acted independently or in defiance of those dominant factions.

autonomy to the military related to: (i) defining the ideological rationale of internal security and public order; and (ii) the actual implementation of state policy related to those issues (Restrepo 1992: 287-288; Blair Trujillo 1993: 183-185). These are central political concerns which should be under the exclusive jurisdiction of democratic institutions if the defining characteristics of democracy established in Chapter 1.3 are said to exist. Correspondingly, the importance of the military as a political actor has also increased. Bustamante notes that "as a result [of social conflict], the military increasingly broaden their repressive, educational, organizational and integrative functions ... and seek to strengthen the central government's capacity to control a highly dislocated society" (Bustamante 1989: 31).

Importantly, the civilian elite-Public Forces alliance has also provoked a gradual militarization of democratic institutions, social conflict and Colombian society at large. In this context, "decisions on war and peace and social problems ... have become first and foremost military problems" (Restrepo 1992: 287). The process of militarization has occurred in a succession of incremental steps at the initiative or with the compliance of the civilian government. Restrepo calls this process "a gradual coup d'etat of civil society which makes a classical coup unnecessary" (Restrepo 1992: 287). Neither direct military intervention in Colombia's political system nor a slow death as anticipated by O'Donnell are likely given the common interests of the civilian and military elites. This is a contrast to many Latin American countries where the military establishment perceives civilian governance as a threat.

1.5.2 Pacts of impunity

Scholars cited in Chapter 1.3 explicitly identify the principles of accountability and respect for the rule of law as defining elements of democratic governance. However, they do not appear to consider what implications the absence of these elements, a situation of impunity, has for the longterm success of democratic transition and consolidation.

Impunity is the "exemption from punishment for the perpetrators of human rights violations" (Jongman and Schmid 1994: 246-247). Impunity occurs when acts of repression or abuses of power committed by agents of the state against the citizens of that state are shielded from judgement or accountability before the rule of law. Military regimes throughout Latin America demanded a guarantee against accountability for past human rights violations in virtually all negotiations which resulted in the transition to democratic governance (McSherry 1992: 464; Loveman 1994). The transition to elected civilian government required, therefore, a formal or informal *pact of impunity* between the new civilian governments and the military elite. These pacts were often imposed by the military, sometimes in alliance with elements of the civilian elite, either: (i) as a condition of allowing

the transition to occur; or (ii) after the transition under the threat of a reintervention in civilian rule (McSherry 1992: 469-478; Loveman 1994: 117). Former authoritarian regimes were able to win guarantees of impunity as a result of their strong bargaining position in relation to civilian actors.

In Latin America, there are almost no cases where the institutions or individuals responsible for gross and systematic human rights violations committed during the decades of military dictatorship have been held accountable for their actions through the due process of law (Loveman 1994: 117-119). There have been various formal processes to promote national reconciliation for the human rights violations and abuses of power committed by the dictatorships. For example, five Latin American countries have convened Truth Commissions.²¹ However, with the exception of El Salvador, there are no cases where these Commissions or processes have been mandated to identify and prosecute the persons responsible.²²

As with autonomy, impunity which exists on the scale experienced in Latin America is likely to be achieved through: (i) the constitutional, legal and the procedural mechanisms of the state; and (ii) by an agreement, formal or informal, between civilian and military elites. Throughout the region, laws guaranteeing impunity enacted as part of the transition process have been the main mechanism against accountability:

(i) military dictatorships passed laws of self-amnesty in Chile (1978 and 1990) and Guatemala (1985 and 1986) before allowing transition to occur;

(ii) in El Salvador (1987, 1993), Argentina (1983, 1986, 1987, 1989 and 1990), Uruguay (1984 and 1986) and Brazil (1985) civilian governments passed military amnesty laws, including a *ley de Punto Final* ("full-stop law") and *ley de Obediencia Debida* (law of Due Obedience) during or after transition;

(iii) in Bolivia, Perú, Paraguay and Colombia civilian governments have failed to take decisive action to prosecute cases of human rights violations, therefore allowing *de facto* impunity to occur through inaction (Loveman 1994: 118; McSherry 1992: 472).

²¹ Bolivia 1982-1984; Argentina 1985; Uruguay 1985; Chile 1990-1991; and El Salvador 1992-1993 (Hayner 1994: 600-603). A Truth Commission is proposed under the terms of the draft peace agreement between the government of Guatemala and opposition and guerrilla groups (Hayner 1994: 605).

²² Information regarding the identity of human rights violators was informally leaked to the public in Argentina and Chile. In El Salvador senior military officials were identified as the intellectual authors of human rights violations. However, the government of El Salvador subsequently passed an amnesty law and only a few officers charged with well publicized crimes were prosecuted. The El Salvadorean commission itself had no mandate to prosecute.

In Colombia, "the impunity enjoyed by agents of the state who commit human rights violations is almost total" (UN doc. E/CN.4/1995/111 para.107). In his 1994 report the Colombian Prosecutor General estimated that only three percent of recorded human rights violations resulted in a judicial process and penal sanctions imposed against the responsible persons (*Procuraduría General de la Nación* 1994).²³ Colombian non-governmental human rights organizations estimate that only one percent of recorded violations resulted in penal sanctions (*Comisión Andina de Juristas* 1994: 2). Colombia currently has an impunity rate, therefore, of between 97 percent and 99 percent.

The 1958 National Front agreement explicitly guaranteed that the Colombian military "would not be held responsible for any failings or excesses" committed during the period of military rule (Wilde 1978: 60). Civilian elites held a dominant position in pre-transition negotiations and offered impunity as a concession to consolidate the military's participation in the civilian elite-Public Forces alliance (Wilde 1978: 60-61; Blair Trujillo 1993: 81-84; Restrepo 1992: 274-275). Therefore, contrary to what occurred in other Latin American countries the Colombian civilian elite guaranteed impunity as a deliberate and voluntary policy choice rather than as a concession made under duress.

In the 1970s, a new *de facto* pact of impunity was established between the civilian government and the military establishment. The pact coincided with the mobilization in civil society against the government's economic and social policies and, correspondingly, increased military intervention in the management of public order. The strategies implemented by the civilian government to repress opposition entailed a *de facto* policy of permitting gross and systematic human rights violations. The strategies were impossible to implement without a guarantee that the agents of the state responsible for that implementation would not be held accountable for the legal consequences of their actions (LIDERLIP 1991: 25-55).

As elsewhere in Latin America, impunity occurs through the constitutional and legal framework of democratic institutions. Article 226 of the Colombian Constitution of 1991 specifies that all crimes committed by members of the Public Forces fall under the legal definition of "acts of service" and are tried under the *fuero militar*. Under this definition, an "act of service" includes any form of human rights violation.²⁴ As noted, the current conviction rate of the military justice system is between one and three percent of alleged cases of human rights

²³ The number of recorded violations is commonly believed to be below the actual number as many such violations are never reported. Therefore, the real impunity rate is actually higher.

²⁴ Placing human rights violations under military jurisdiction is in violation of various international human rights instruments to which Colombia is a signatory, including resolution 47/133 of December, 1992 of the UN Declaration on the Protection of all Persons against Forced Disappearance and Article IX of the 1994 Interamerican Convention on the Forced Disappearance of Persons.

violations. However, this study will argue that impunity is not a simple problem of the actual effectiveness of the system, which is "tough and effective in prosecuting disciplinary offenses involving disobedience of order ... but has proved itself equally effective in guaranteeing impunity for violations of ordinary law in respect to acts of murder, torture or kidnapping" (UN doc. E/CN.4/1995/111 para.107). It also represents a fundamental lack of political will on the part of civilian politicians to ensure that prosecution occurs.

The pacts of autonomy and impunity, existing in Colombia and elsewhere in Latin America, have significant implications for the consolidation of democracy. These implications are considered in Chapter 6. Most importantly, they undermine or negate the principle defining elements of democratic governance already identified in Chapter 1.3. As also argued in Chapter 1.3, the defining elements of democracy exist in relation to each other and the absence of one element effects the real possibility that an environment for the other elements can exist. In Colombia and Latin America due process for past human rights violations allegedly committed by agents of the state have also been the main demand from organizations in civil society (LIDERLIP 1991: 19-21).

1.6 Methodology and sources

This study is based on theories which have evolved to explain the recent democratic transition and consolidation processes in Latin America. These theories employ the concept of elite pacts as a central analytical element. Scholars often use Colombia as a case study to demonstrate that elite pacts offer the best prospects for democratic transition and consolidation. This study will argue that, contrary to conventional regime transition theory, elite pacts in Colombia have resulted in a restricted political system which can only be sustained through force.

The situation of Colombia is unique in Latin America, largely as a result of the alliances between civilian elites and the Public Forces. However, this study will challenge the validity of theories which argue that transition by elite pacts offers the best prospects for democratic transition and consolidation, in Colombia, and in Latin America in general, by comparing the mechanisms established in Colombia with similar mechanisms existing in other Latin American countries. In some cases, the work of scholars who do not use the concept of elite pacts will be used as a result of the inability of regime transition theory to fully account for the Colombian paradox. These additional theories are not characterized as "transition theory", but, nevertheless, focus on the prospects for democratic consolidation in Latin America.

This study will argue that comparative case studies can make an important contribution to theory-building in political science. As argued by Bradshaw and Wallace, "[c]ase studies can have profound theoretical implications which ... may

illustrate the inappropriateness or even irrelevance of a particular theory. By studying these cases, we can challenge scholarly consensus and broaden the often narrow focus of Western sociology ... [and] they have theoretical implications that undoubtedly will affect future comparative research (Bradshaw and Wallace 1991: 161).

Furthermore, this study emphasizes the importance of history. As Isaac and Griffin note, "no sociological account, however theoretically or technically sophisticated, is valid if it denies or masks important features of historical reality" (Isaac and Griffin 1989: 873 as quoted in Bradshaw and Wallace 1991: 164). As will be argued, an explanation of the current Colombian situation is virtually impossible without referring to its historical constants dating back to independence.

The analysis of the situation in Colombia is based primarily on my own first hand experience during nearly four years of work as a human rights researcher in Colombia. In my work I visited most regions affected by political violence. I had regular contact with both government officials and persons representing a multitude of sectors and organizations in civil society, including unions, women's groups, organizations for internally displaced persons, street children, indigenous and black communities. In addition, I participated in academic, community based and international conferences and workshops related to the human rights situation in both Colombia and in Latin America. These events provided me with valuable insights regarding the Colombian human rights situation. More than anything else it was this direct contact that made me question the validity of theories which argue that elite pacts offer the best prospects for democratic transition and consolidation.

This study uses historical data concerning the political, social and economic developments after the end of Spanish colonial rule. For the time period covering the developments until 1990, I have relied mainly on secondary sources. For the time period 1990-1995 I have in addition to secondary sources used primary sources, including interviews which I conducted between 1990 and 1994. Among the written primary sources are material and statistics provided by a broad range of Colombian human rights and social non-governmental organizations. The Colombian government's own human rights reports have been consulted for the period 1990-1995 as well as a large number of United Nations documents and Colombian and international newspapers.

2. Bolívar's knot: The historical context of political violence in Colombia (1828-1949)

Nobel prize winning Colombian author, Gabriel García Márquez once described Colombia as "Bolívar's knot". García Márquez was referring to the dilemmas inherent in the Colombian reality which were posed at Independence and were never subsequently resolved.²⁵ Despite the passing of 170 years, persons attempting to consolidate a coherent state and democratic governance in Colombia today are confronted by many of the same factors which thwarted Bolívar's attempt to create a coherent unified state from the remains of the old Spanish empire in South America.

This chapter is not a "war by war" review of Colombian history. Rather, it will identify and trace the evolution of the threads in Bolívar's knot between the end of the Wars of Independence (1828) and the beginning of the period known as *la Violencia* (1946-1966) (the Violence). Chapter 2 will establish that the 1958 National Front agreement and the subsequent government by bipartisan elite pact were not unique in Colombian history. Rather, these events were founded in patterns of political behaviour that are well established and reflect an almost instinctive or habitual elite response to crisis. Historians note that while there has been an evolution of the dynamics of the exercise of political power throughout Colombian history "the old order has never been defeated, but simply incorporated into the new order through political compromise" (Pearce 1990: 24). Therefore, these threads, or historical constants, play a decisive role in defining the characteristics of the political regime under review in the main body of this study. The continuum of those threads is found in Colombia's contemporary polity as the patterns of violence established during the pre-1949 era "still weight decisively in our political culture" (Restrepo 1992: 276).

²⁵ General Simón Bolívar led the Spanish colonies of the Andean region of South America in the Wars of Independence against Spain. Bolívar attempted to build a coherent state from Spain's former Andean colonies and served as President of *Gran Colombia*, which comprised present day Colombia, Venezuela, Panamá, Ecuador, Bolivia and Perú, from 1819 until 1828. *Gran Colombia* collapsed in a revolt lead by regional elites in 1828. Many historians trace Colombia's inability to build a unified and coherent nation state in the 19th and early 20th century directly to Bolívar's defeat. Consequently, they argue that Colombia won Independence in 1828, however, the creation of a nation did not follow.

2.1 The historical constant of democracy

Colombia has been governed by civilians since its independence from Spanish colonial rule in the early 1800. The Colombian military has directly intervened in the political system at the national level on two occasions, once in 1854 and a second time in 1828. However, both military governments were shortlived and civilian governance subsequently restored.

19th and early 20th century government in Colombia had the basic trappings of democratic governance found during these eras. For example, elections were held on a regular basis, although fraud, in the form of vote buying, ballot stuffing, coercion or other practices appear to have been "always present" (Wilde 1978: 31). Colombian democracy inherited its basic structure and political culture from the former Spanish system, including a tradition of legalism which is still present in the polity.

2.2 The constants of geography and regionalism

Colombia's geography has determined the historical patterns of settlement and economic activity. The country is divided by three Andean mountain ranges (*cordilleras*) which are separated by two broad river valleys (*los valles del Magdalena y Cauca*). It has coasts on both the Atlantic and Pacific oceans and territories in the Amazon Basin (*Amazonas*) and the immense plains (*los Llanos*) which extend from the eastern edge of the Andes into Venezuela. There are three types of climatic zones: cold highlands, temperate mountain slopes and hot tropical valleys. Dramatic changes in altitude mean that tropical and alpine conditions can exist within a short distance from each other, giving Colombia the second highest level of biodiversity in the world after Brazil.

Hartlyn notes that "[Colombia's] rugged topography impeded effective national integration..." (Hartlyn 1988: 18). Colombia's geography posed significant physical barriers to transportation and communication which were decisive factors in the Colombian experience of nation building. Economically, geography severely impeded the development of a national economic infrastructure. This was, in large part, a result of the huge costs, engineering and logistical challenges and the inability of the weak central state apparatus to promote national integration. Colombians were severely limited in their ability to move their products and to develop internal and external markets. Even after the inauguration of rail transportation and regular stream navigation on the Magdalena river in the 1870s, it still took four to six weeks to travel from the Atlantic ports to Santa Fé de Bogotá, the capital city, which is located at 2,600 meters in the Central Andean mountain range (Pearce 1990: 24).

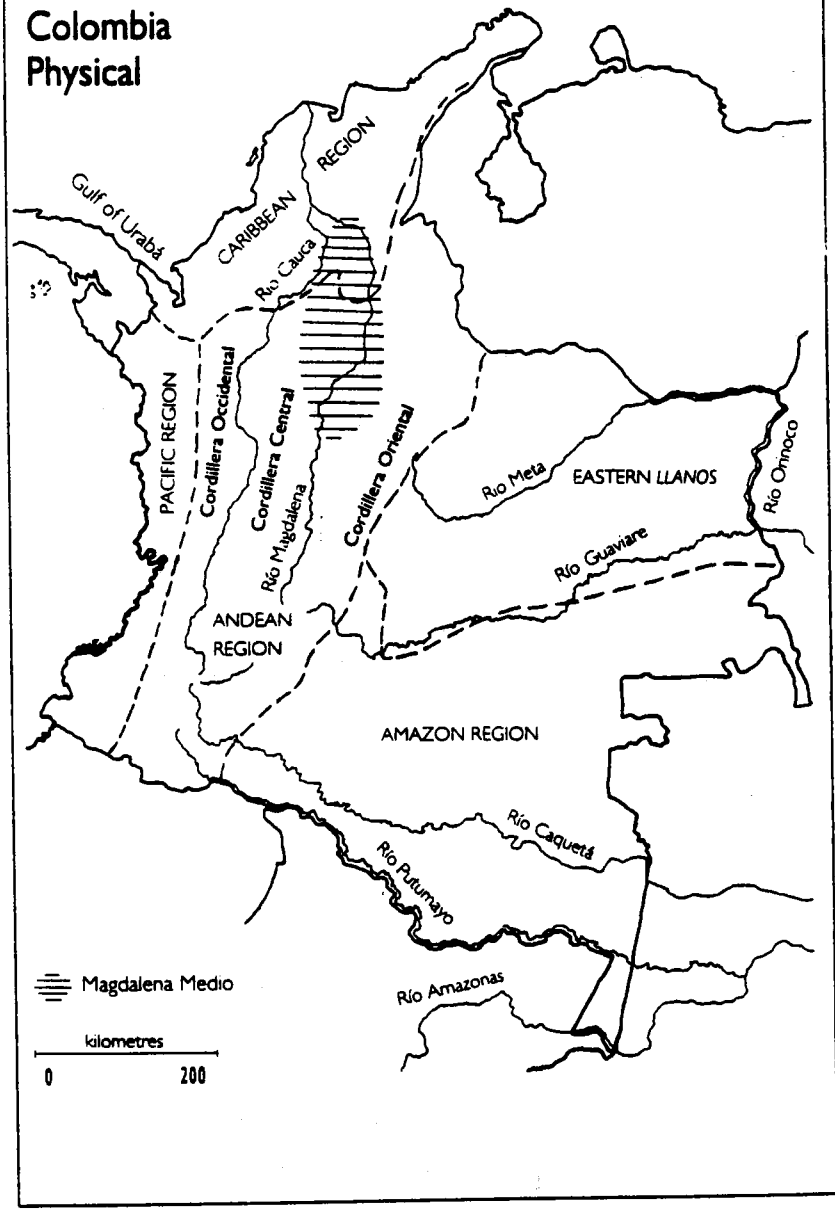
Consequently, no Colombian national market appeared until the 1920s when the rapidly expanding coffee sector, which grew four times in value between 1914 and

1929 (Hartlyn 1990: 28), created the conditions for the development of fledgling manufacturing industries in the 1930s. The economy remained predominantly agrarian until well into the 20th century and as late as 1930 the manufacturing sector still only employed 15,000 workers (Pearce 1990: 30). In 1905 Colombia, together with Haiti, had the lowest levels of foreign investment in Latin America and the real value of exports, which consisted almost entirely of agricultural products, was only 30 percent higher than it was at Independence (Pearce 1990: 27).

Colombia, therefore, began the 20th century with one of the most economically backward countries in Latin America. For the purpose of this study, Colombia's late development has at least two relevant implications: (i) a weak economy and the limited availability of resources, financial or otherwise, tended to produce a weak central state apparatus. The state's main source of revenue during the 19th century was import and export duties which remained minimal until the growth of coffee exports in the second decade of the 20th century (Pearce 1990: 28). Consequently, the state did not have the resources to promote national economic or political integration, establish its independence from the two traditional parties or assert its authority in many regions of the country; also (ii) in this economic context landownership was almost the sole basis of wealth and, implicitly, political power. As a result, "the traditional values of the *latifundo* (large agricultural estates) were unchallenged until the end of the 19th century at a time when most other Latin American countries had strengthened and centralized the state and completed their liberal economic and political reforms" (Pearce 1990: 23). No fundamental change in Colombian demographics, such as industrialization and the development of an urban working class, occurred until the 1930s and 1940s and no significant new political actors appeared from outside of the traditional bipartisan polity to challenge the *status quo*.

Politically and socially, Colombia's geographic barriers dictated that most regions of the country developed in relative isolation of the colonial and post-colonial central state authority. Isolation reinforced strong regional identities to the detriment of a Colombian national identity. Regionalism tended to encourage the formation of local political dynamics in which central government policy could not be implemented and elite groups functioned in a semi-autonomous manner resulting in the "development of a number of regional centres [which are] significant to this day" (Hartlyn 1988: 18). Throughout Colombian history, therefore, regionalism and the ability to coopt or integrate regional interests within a partisan political framework has been an important factor in capturing political power, producing a fragmented polity and political culture based on the promotion of regional rather than national interests.

Colombia Physical



2.3 The constant of two dominant political parties

The control over the formal political system exercised by the Liberal and Conservative parties extends from their formal consolidation in the 1850s to the present day, a period of 145 years.²⁶ Consequently, the two traditional parties have determined or strongly influenced almost every aspect of political life, nation building and the characteristics of Colombian society itself. According to Wilde "the Liberal and Conservative parties were the central and inescapable basis of political life... They were the most fundamental national institutions in society and more significant structurally, culturally, behaviourally than any other social grouping (such as regions or class) or other national institutions (such as the church, the military or even the state itself)" (Wilde 1978: 35). The parties, therefore, were the dominant structures in the country and possessed the greatest range of "power capabilities" for organizing civil society behind them (Wilde 1978: 35). Those capabilities included the ability to mobilize for elections and violence, which often occurred as an extension of the electoral process, distribution of economic rewards to supporters through the use of *clientelismo* (patronage).

As noted, late economic development and stagnant demographic trends meant that no third political force, or *new challengers*, emerged to upset the hegemony of the Liberals and Conservatives until the 1930s and 1940s.²⁷ When they did happen the "processes of industrialization and of working class integration into political life [beginning in the late 1930s] inevitably occurred in the context of, and were conditioned by, the two parties" (Hartlyn 1988:16). New political actors were either integrated into the bipartisan framework and lost their independent identity or repressed. One candidate in the 1922 Congressional elections described this process when he said "I see no need for a third political party when all of the aspirations of workers fit into Liberalism" (Pearce 1990: 30).

The Liberals and Conservatives both had their roots in the Wars of Independence (1810-1828) and were formally established in the 1850s. By that time both parties were able to mobilize the mass of their supporters to participate in elections and civil conflicts. Initially, they were "loose confederations of large landowners and merchants who possessed a considerable degree of autonomy in their regions rather than tightly knit organizations" (Hartlyn 1988: 18), at once reflecting and

²⁶ Uruguay is the only other Latin American country where the parties formed at Independence still retain power. No third political party has ever won power in Colombia at the national or regional levels. With the exception of two members of the political party AD M-19 who briefly held minor cabinet positions during the administration of Cesar Gaviria Trujillo (1990-1994) no third party has ever held government office at the national level.

²⁷ The most important *new challenger* in the period under review in Chapter 2 was the *Partido Comunista de Colombia* (Communist Party of Colombia; PCC), which based its support among workers in the emerging agroexport (banana), petroleum and transportation (ports and railways) sectors (Pearce 1990: 30).

reinforcing the country's regional fragmentation. Coherent party platforms were articulated in the late 1840s and early 1850s and national level party structures and bureaucracies were consolidated beginning in the 1880s (Hartlyn 1988: 25). Despite strong regional pressures a degree of centralization and internal coherence was demanded by the necessity to win elections, distribute patronage and mobilize for war.

There does not appear to be a consensus among historians regarding the precise origins or initial ideological distinctions between the Liberals and Conservatives (Bushnell 1992: 19). Some scholars stress economic factors (Berquist 1992: 6 and Kalmanovitz 1988: 169) while others contend that the main difference was found in the nature of their relationship to the institutional Catholic Church (Bushnell 1992: 28; Restrepo 1992: 277; Pearce 1990: 17).²⁸ However, historians agree that such differences between the Liberals and Conservatives, in terms of ideology, party policy and the reality of their actions when in office, were marginal. One historian concludes the differences were "essentially factional divisions with the small ruling oligarchy ... [ideological differences] that may have existed were superseded by more purely personalistic and regional disputes" (Hartlyn 1988: 19). Another notes that "it can be said that the two parties accepted, without serious questioning, the dominant economic ideology of the last century, that is, free enterprise and *lassiez faire*, which suited all sectors of the Colombian upper class quite well ... party leaders argued about the details but did not oppose each other as monolith blocks" (Bushnell 1992: 27). Ideological differences, therefore, were more perceived than real and did not play a significant role in determining party identification.

Instead, historians tend to explain the origins of the two parties in terms of the identification of elite interests, over time and on a regional basis, with one party or the other. Elites gradually assumed an identity within the emerging bipartisan framework in the absence of other mechanisms, including autonomous state institutions, to channel, promote and protect their interests. The articulation of those elite interests and the "ideology" of a respective party became indistinguishable (Pearce 1990: 17-22; Hartlyn 1988: 19). Party membership itself was hereditary, handed down through generations to the point of assuming the characteristics of political culture. "One is Liberal or Conservative as one is Catholic, as one is Colombian-by birth. One does not even consider *not being*

²⁸ The Catholic Church was closely aligned with the Conservative party between Independence and the 1960s. Liberal reforms, based on the secular state, threatened the power of the church which subsequently participated actively in elections and conflicts. Bushnell and others argue that church intervention added a religious element to partisan conflict where actors were cast in terms of "good and evil", further polarizing Colombian society and fuelling fanaticism on both sides (Bushnell 1992: 28). Since the 1960s the church has remained politically active and conservative in ideology. However, it has assumed a nonpartisan posture and its power in civil society has been in decline since the 1950s.

Liberal or Conservative, just as one would never think of not being Catholic or Colombian through a simple act of will" (Buitrago as quoted in Hartlyn 1988: 18).

Party affiliation, therefore, polarized Colombian society into two political camps. This partisan identification was the primary element of social cleavage, replacing race, religion, language or issues that may have provided the axis of social cleavage in other societies during comparable historical periods (Hartlyn 1988: 17).

2.4 The constant of political violence

"Colombia had a heritage of political violence second to none" (Wilde 1978: 29). Historian Gonzalo Sánchez describes Colombia during the 19th century as a "country of permanent and endemic warfare" (Sánchez as quoted by Bushnell 1992: 12). There were no fewer than 14 national level civil conflicts and two international wars between 1828 and 1902. Innumerable local and regional conflicts also occurred, including 40 rebellions to seize departmental government during the era of the federal constitution (1863-1886) (Pearce 1990: 20), intra-elite wars, land struggles which took on a partisan identity and urban riots in the 1930s and 1940s. "These wars never ended in decisive victories but were short breathing spaces before renewed fighting" (Sánchez as quoted by Pearce 1990: 17).

An estimated 40,000 persons died on the battlefield between 1830 and 1870 (Bushnell 1992: 15). Another 100,000 persons, or two percent of Colombia's population were killed in the largest of the 19th century civil conflicts, the Thousand Day War (1899-1902)²⁹ and over 200,000 persons died in the period of the Violence. "What is inescapable [in Colombian history] is the sheer frequency with which the political factions made use of force, or the implied threat of force in the hope of effecting a change of rulers" (Bushnell 1992: 12). The violence also had serious economic implications as the destruction was often targeted at the country's productive structure, contributing to Colombia's slow economic development.

Political violence occurred primarily in the context of bipartisan competition for control of the state and the power to control the distribution of the resources of the state. The importance of maintaining at least some form of access to political power was a result of the backward economy. In impoverished 19th century Colombia the ability to award contracts, control political and public service appointments and make policy decisions related to the economy was a critical, and

²⁹ The Thousand Day War was also the largest of Latin America's 19th century civil conflicts (Bushnell 1992: 15).

sometimes the only, source of wealth. According to Wilde, "the state budget was the only industry in a country without industries ... and the government offered unparalleled opportunities for advancement in the absence of a developed private sector (Wilde 1978: 26). This was especially the case during times of cyclical economic downturn or recession which increased the inherent value of government resources. For example, the Liberal rebellion which led to the Thousand Day War was initiated by Liberal elites who were excluded from government positions and did not have other economic alternatives (Pearce 1990: 25).

Wilde and others note that "control of the bounty of the state turned on the capture of the national Presidency. Almost every administrative position in the country was filled through patronage down to the humblest municipal level employee" (Wilde 1978: 36). According to Bushnell "political struggles in Colombia revolved around competition for the control of the meager booty contained in the public treasury or the social status that official positions conferred. The amount of booty was so slight, particularly at the local level, that it is hard to imagine anyone risking their life fighting for it. However, it was precisely in the small towns and villages that economic alternatives were most limited, and where control by one's party of official decision making in such matters as the letting of contracts and adjudication of land titles might make the difference between poverty and modest comfort" (Bushnell 1992: 27).

The role of the political parties as catalysts for violence must also be understood in terms of the political culture generated by partisan identification. Hatreds between groups in civil society were fostered as a mechanism for retaining the loyalty of supporters. Restrepo notes that "beginning in the 19th century [party elites] nourished the sentiment of party loyalty among the subordinate classes, feeding prejudices and mutual hatred ... in this way they managed to maintain broad-based party loyalty, drawn more from hereditary hatreds than from the ability of the parties to represent and channel the economic and social aspirations of the subordinate minority" (Restrepo 1992: 276).

The parties themselves are frequently described as "subcultures" rather than organizations offering distinct options for the management of state (Dix 1979: 304; Hartlyn 1988: 27; Wilde 1978: 37). These subcultures, or party identifications, were "so intense and deep seated that they have been called hereditary hatreds and are responsible for much of the political violence" (Dix 1979: 304). In part, historians attribute this aspect of political culture and social cleavage as a consequence of "the sheer cumulative effect of injuries given and received and of grudges passed down from father to son to grandson" (Bushnell 1992: 27), what Wilde refers to as the cycle of "attack and revenge" which often assumed a dynamic beyond the control of the party elites themselves (Wilde 1978: 67). Some argue that this has created a culture of violence, or predisposition in Colombian society towards the use of violence. However, one scholar notes that it is a "simplification to say that the Colombian people were an aggressive people from

the beginning. Rather what you find is a country where the political customs of the ruling class have led the people into war since the very first days of the republic" (De Roux as quoted by Pearce 1990: 22).

2.5 The constant of elite pacts

The 1958 National Front agreement described in Chapter 4 was not the first time that an *elite pact* has been used to end a period of political violence in Colombia. Rather, elite pacts are a key element of a pattern of political behaviour that is well established in Colombian history. Dix reports there were six examples of bipartisan power sharing arrangements in Colombia before the 1953 military coup, including the governments of 1854, 1869, 1901, 1930, 1945 and 1949 (Dix 1979: 304). In addition a period of relatively stable coalition government incorporating both parties existed between 1910 until 1946.

Before 1949 the Liberals and Conservatives parties both enjoyed their respective eras in power. The first period of Liberal domination lasted from 1848 to 1885. The Conservatives held office from 1886 until 1930 and, subsequently, the Liberals won the elections of 1930 and remained in power until 1946. The last period of Conservative rule from 1946 to 1953 was marked by the escalation of inter-party and intra-party conflict which led to the Violence. Despite alternating periods of domination the party in opposition was usually not completely excluded from some form of participation in the exercise of that power. According to Wilde the dominant party was "not expected to act as a party government, but to share power with the elites of the other party. Majoritarianism was qualified. Neither party expected to be a permanent minority without at least some participation in the government." (Wilde 1978: 34).

Elite pacts permitted elite accommodation within the context of polarization and political violence and "undoubtedly contributed to the survival of the two parties into the 20th century" (Dix 1979: 304). They constituted the mechanisms through which the rewards of power could be shared, ensuring that all significant partisan factions capable of destabilizing the political balance were not left out. The coalitions were usually short lived, lasting for a period of several years or less, and were seen as a mechanism for establishing a political truce or as a means of transferring power from one party to the other on a gradual and less threatening basis. In each case the coalition was led by a dominant partner. Dix notes that "none of the coalitions had a constitutional basis" (Dix 1978: 306). Rather, the pacts were "conversations among gentlemen", which tended to be informal, personalistic and narrowly based" within elite elements which were dominant at a given historical moment (Wilde 1978: 58).

Elite pacts, therefore, fit within the cycle of violence and reconciliation and they have been habitually used as a mechanism for accommodation, power sharing,

mediation and resolving conflict. As Restrepo notes "until the bipartisan National Front, Liberal and Conservative leaders based their monopoly of power on a singular and passionate dialectic of bitter confrontations and transitory national reconciliations ... party leaders launched the people into cycles of civil war that ended in pacts of national reconciliation arranged by the same leaders" (Restrepo 1992: 276). Violence frequently occurred precisely in the periods when the governing consensus had broken down or when one party was excluded from access to power for an extended period. Given the interaction between regional interests, the breakdown of consensus was as likely to occur within the parties (intra-party) as it was between the parties (inter-party). Consequently, there are examples of bipartisan governments founded on elite interest held in common across party lines, such as in 1886 and 1946 (Dix 1979: 304-307).

Elites recognized "when intra-elite conflict had gone too far" and moderates on both sides would be drawn together, by mutual interests, "to create the basis of a new consensus" (Wilde 1978: 34). Consensus appears to have been easiest to find when commonly held economic interests were threatened. For example, the Thousand Day War virtually destroyed the Colombian economy and resulted in the loss of Panamá to the United States. Following the war elites on both sides "recognized the value of power sharing" (Hartlyn 1988: 28), particularly in the years of rapid economic growth between 1910 and 1920. They understood that "the benefits of interparty peace were abundant ... and had a strong economic incentive to end and prevent the renewal of fratricidal warfare" (Wilde 1978: 34).

It should also be noted that the party elites were not always able to control political violence. In elite pact negotiations which were a prelude to a new power sharing consensus the moderates or accommodators leading the process had to find common ground with moderates in the opposing party and contain hardliners in their own party. They were also confronted by deeply held hatreds generated in the party rank and file by partisan affiliation. These hatreds often superseded elite political or economic objectives. At times, therefore, the rank and file membership was difficult to control and the elites were forced to "let the violence run its course" before imposing an accommodation (Dix 1979: 306).

2.6 The constant of *clientelismo*

Political power in Colombia has historically been consolidated and exercised through clientelistic relationships. *Clientelismo* occurred as a reward, usually in the form of patronage, in exchange for support. The reward could take the form of government contracts, licenses, a position in the public service or in local or regional government, or a favour such as the granting of title to land held within the public trust. The promise of reward could be reinforced by the use or implied threat of force. *Clientelismo* occurred on two distinct axes between: (i) the state and elite groups, institutionally represented by the Liberals and Conservatives; and

(ii) between elites in the two parties and their supporters in civil society.

It has already been established in Chapter 2.4 that control of the resources of the state was critical to Colombian elites in the absence of other economic opportunities. The party elite-state relationship was, therefore, frequently motivated by the desire for partisan enrichment. According to Wilde "the state was a prize of the parties; it was important for what they could get from it ... the state's own structures and institutions, its own potential public values, were subordinated to the collected particularistic goals of the clientelistic parties" (Wilde 1978: 36). In this light, the state apparatus became a "mediator" through which members of the two parties "distributed power and privileges among themselves" (Pearce 1990: 5).

The second axis of *clientelismo* occurred between the party elites and their supporters in civil society. The success of the parties was based in their ability to mobilize their supporters for both elections and wars. In turn, the capacity of party elites to mobilize supporters and consolidate their loyalty was based on the ability of elites to distribute some of the rewards of power. *Clientelismo* began in the 19th century within the context of the dependent relationship between peasants and landlords. Hartlyn notes "the lower classes were drawn into the conflicts [between elites], especially in rural areas, because of their dependence on the landlord" (Hartlyn 1988: 19). To consolidate support and guarantee the loyalty of the rural populations the landlord would "promise of some favour or reward" (Pearce 1990: 20).

With the evolution of party bureaucracies in the mid to late 1800s, local landlords were replaced by a network of regional party bosses responsible for mobilizing support and distributing patronage when the respective parties were in power. Party infrastructure created "a vertical hierarchy of various brokers which formed a pyramid from the local organizers to the regional bosses to the national elites. Within this pyramid the lower level brokers furnished bodies for battles, both electoral and martial, and their superiors, when in power, responded with jobs and favours from the government" (Wilde 1978: 36).

The rank and file of the parties suffered from the same lack of economic opportunities as the elites and were clearly aware of the implications which electoral results and shifts in power had for their own well being (Bushnell 1992: 27). Berquist notes that "through alliance to one or the other party [peasants and small landowners] secured a host of strategically placed allies in their struggle to accumulate capital and land" (Berquist 1992: 66). For peasants, victory could mean anything from "relief from military conscription for a son to effective police protection from belligerent neighbours to a favourable resolution of legal disputes". For wealthier small landowners victory could mean "access to government jobs, advanced education for children, a favourable decision on the location of a road or any of a hundred other political or legal favours" (Berquist 1992: 66-68).

Through these clientelistic relationships the parties "formed the most important link between the top and the bottom of society" (Wilde 1978: 36), replacing the state as a source of identity. Owing, in a large part, to the lack of distinct ideologies and the use of *clientelismo*, party membership was homogeneous and extended across class and regions. The "quest for these stakes [the ability to control patronage] tied together the most diverse strata of society ... the parties could not be distinguished from each other on the basis of their social followings (Wilde 1978: 36).³⁰ *Clientelismo* was, therefore, a critical factor in reinforcing partisan identification and contributed to the overall polarization.

2.7 The Armed Forces of Colombia

One constant that does not reach from history into the contemporary polity is the role of the Colombian military in political life. By the late 1970s, the *Fuerzas Armadas de Colombia* (Armed Forces of Colombia; FAC) was the single most important actor in political violence in Colombia and a force in politics and society in its own right. However, historically the military in Colombia has been weak. It did not play a significant role in the construction of the state and, unlike most other Latin American countries, did not develop as a independent political force or mediator in the political process.

The Colombian elite which rebelled in 1828 against *Gran Colombia* and Bolívar's vision of a federal South America distrusted his army, which was comprised mainly of officers from Venezuela. The army was a centralizing force which conflicted with the localized mentalities and ambitions of the regional elites. When *Gran Colombia* collapsed the armed forces were dismantled. Only a small, poorly funded force was left in place and, "starved for resources, it became one of the weakest armies in Latin America" (Pearce 1990: 16). By the time the Liberal and Conservative parties began to consolidate in the 1840s and 1850s the military, as a state institution, "was practically non existent" (Hartlyn 1988: 20). In 1850 the army only had 500 men under arms (Wilde 1978: 35). Various attempts to professionalize the military during the 19th century failed. For example, efforts in 1848, 1861, 1883, 1891 and 1896 to open a school for officers were unsuccessful as a result of resistance from civilian officials. Few officers had any formal training and most received their positions through patronage appointment (Blair Trujillo 1993: 26). It was 1943 before the first officer professionally trained in a

³⁰ The homogeneous composition of the parties contributed to the unique dynamic of political violence in Colombia. Historians note that neighboring villages often assumed opposing political affiliations. These villages had no other distinctions in terms of class, race, religion or the base of their economic activities. Over time, political violence assumed a local dynamic beyond the control of elites as the villages fought personalized and localized conflicts between themselves. These conflicts often occurred in the name of avenging a past grievance rather than any particular issue.

Colombian school joined the military high command (Wilde 1978: 35).

The civil conflicts which occurred prior to 1949 were fought largely by irregular armies organized by the two parties and the state itself has never exercised a monopoly on the use of force. The army usually played a small role in these conflicts. Where it did, it was often beaten by the better armed partisan forces, as occurred in the Thousand Day War (Bushnell 1992: 28). Some historians contend that the army took on the partisan colour of the party of government, and was most often being seen to be aligned with the Conservatives. Army officers played a role in politics, however, they did so "more in their capacity as Liberals and Conservatives than as generals or colonels" (Bushnell 1992: 28). Their traditional ideological position was non-involvement in the political system (Blair Trujillo 1993: 3-10).

Bushnell notes that "at least a partial explanation (for the evolution of the Colombian political system) can be found in the relative weakness of the military as an independent political force, so that the consolidation of the two party system was not disrupted by interludes of military dictatorship" (Bushnell 1992: 28). For the purpose of historical context, therefore, the legacy of a weak military has two implications. The political parties were unchallenged during the period during which they consolidated. The military did not exist as an independent force to condition the actions of the parties or interrupt civilian control of the state. Historians agree that this was a major factor permitting the development of both the parties and a formal democratic polity in Colombia.

In addition, the direct intervention of the armed forces was not an option open to either civilian or military actors. Rather than "knocking on the barracks door" in a time of crisis, as was the custom throughout Latin America, elite interests were best protected either through the use of their respective irregular forces and/or through a new elite accommodation or pact. Irregular forces were a "power capability" of the parties themselves and did not have any independence outside of civilian objectives. Provoking a military take over was, therefore, not a viable option, either in terms of the military's strength or the protection of elite interests.

3. La Violencia

The two decades between 1940 and 1960 represent a watershed in Colombian history. The singular event at the center of this period was a *de facto* civil war between Liberal and Conservative parties known as *la Violencia*, 1946-1966 (the Violence).³¹ The conflict has been called the "greatest mobilization of peasants in the recent history of the Western hemisphere" (Hartlyn 1988: 43-44). However, more importantly for the purpose of this study, the Violence marks the historical moment when the axis of political conflict in Colombia shifted.

The Violence simultaneously integrated two distinct levels of conflict. On the one hand, the threads of Bolívar's knot described in Chapter 2 again came to their logical culmination in a period of *inter-party* civil war between Liberal and Conservative partisans. At the same time, however, the conflict became "an incipient revolution" (Sánchez 1992: 80). The old bipartisan hegemony collided with the demands of *new challengers* in civil society who assumed an independent political identity outside of the traditional political order. Their origins lay in the *silent revolutions* of profound economic, demographic, social and cultural changes which swept Colombia, and most other Latin American countries, during the first half of the 20th century. The unresolved historical issue of land reform was also critical.

The new axis of elite-new challengers conflict fundamentally altered the relationship between elites and civil society by "exhausting the traditional mechanisms of control, based in *clientelismo* and bipartisan domination" (Unprimny and Vargas Castaño 1990: 144). Three implications of the shift are relevant for this study: (i) for the first time in Colombian history intra-elite/*inter-party* interactions were conditioned by the interactions between those elites and new independent forces in civil society. In large part, this new axis of elite-new challenger interaction formed the rationale for the 1958 National Front agreement; (ii) in contradiction to transition theories employing the concept of elite pacts outlined in Chapter 1.4, the Liberal and Conservative parties acted decisively to exclude the new challengers from the political process. This exclusion is one of the central factors in the events described in Chapters 3 and 4; and (iii) the exclusion of new challengers and inability of the old bipartisan polity to address the process of transformation created by the silent revolutions provided the

³¹ Historians use different periods to define the Violence. The discrepancy is a result of their use of different events as historical markers. The period of 1946-66 is based on Bergquist, Peñaranda and Sánchez (1992: xii). Others use the periods 1949-1966 or 1949-1958.

antecedents for the contemporary crisis of endemic political violence and human rights violations described in Chapter 5 and 6 of this study.

3.1 *Silent revolutions: Transforming Colombian society*

Many historians use Pécaut's characterization of the *silent revolutions* to describe the economic, demographic, social and cultural changes which have occurred in Colombia since the 1930s (Uprimny and Vargas Castaño 1990: 144-148). The use of the term "silent revolutions" specifically refers to the period between the 1930s and the 1960s. Many of the trends which characterize these *revolutions* were accelerated by the Violence and are still occurring in Colombia in the 1990s.

The *silent revolutions* are not defined by singular events. Rather, they are a process of gradual transformation which "eliminated the base of legitimacy of party divisions" by creating new opportunities and sources of power outside of the control of the bipartisan polity (Uprimny and Vargas Castaño 1990: 146). It is beyond the scope of this study to provide a comprehensive analysis of these changes. However, it is important to summarize the main elements of the *silent revolutions* insofar as they illustrate: (i) the context in which new independent political forces appeared; and (ii) the response of the traditional elites in the Liberal and Conservative parties.³²

Structural changes in the economy - Pécaut and others trace the origins of the *silent revolutions* to the first large inflows of foreign capital which arrived in Colombia during the late 1920s (Pécaut 1987: 110; Wilde 1978: 40). "Massive societal changes [were] induced by growing economic ties with the outside world" as export-led economic growth, dominated by the coffee sector but including other commodities such as cotton and bananas, began the process of integrating Colombia into world markets (Hartlyn 1988: 30).³³ After 1930 industrial and manufacturing sectors also grew rapidly, with related sectors averaging 11 percent growth between 1930-1939 (Wilde 1978: 41; Revéiz 1989: 42). Industrialization was "largely initiated by the traditional large landowning-merchants" who expanded and diversified their economic base from more traditional activities such as agricultural production (Hartlyn 1988: 34). The state "played an indirect and minor role" (Hartlyn 1988: 34), "providing the conditions under which the private

³² Definitive works on the process of economic and social transformation which occurred between the 1930s and the 1950s include Pécaut 1987: Vol. I-II; Revéiz 1989; Kalmanovitz 1989; Bergquist 1992; LeGrand 1992.

³³ Wilde points out that "the vast societal process, modernization, came later to Colombia than much of Latin America" (Wilde 1978: 40). As noted in Chapter 2, the late arrival of modernization in Colombia contributed to the ability of the traditional parties to retain their hegemony of power until the 1940s.

sector could take initiatives", including the development of economic, communication and transportation infrastructure (Wilde 1978: 41; Pearce 1990: 37).

Changing demographics - Between 1918 and 1953 Colombia's urban population grew from 21 percent to 43 percent of the total population (Wilde 1978: 41). By 1992 71 percent of Colombians lived in urban areas and that number is expected to reach 75 percent in the year 2000 (UNDP 1994: Table 22). Population displacement which occurred as a result of the Violence accelerated this trend during the 1950s as "landlessness, extreme poverty and rural violence prompted an exodus from the countryside and chaotic urbanization (Americas Watch 1986: 11). Rapid growth in the cities was accompanied by growth in the population in general, which averaged 2.7 percent between 1964 and 1973 (Revéiz 1989: 178) and continued at an average of 2.3 percent in 1992 (UNDP 1994: Table 23). Demographic changes interacted with the structural changes in the economy. For example, while the urban workforce increased, the number of persons employed in sectors related to agriculture declined from 70 percent of the workforce in 1925 to 50 percent in 1951 (Wilde 1978: 40) and 17 percent in 1992 (Fedesarrollo 1994).

Economic growth and disparity - Colombia's GNP increased 2.2 percent between 1939 and 1944, and 6.2 percent between 1945 and 1949 (Wilde 1978: 41). As previously noted, high levels of growth continued through the 1960s to the 1990s. However, there has been little "trickle down" of the benefits of economic growth or modernization to civil society at large. Between the 1940s and 1960s the majority of Colombians "experienced either a stagnation or relative decline in their standard of living" (America's Watch 1986: 11). In 1945 "almost three fourths of the populations were peasants living in relative poverty and three percent of the landowners monopolized half of the land" (Sánchez 1992: 76). During this period the government did not adopt interventionist economic policies nor did it construct the social infrastructure which accompanied urbanization in many other Latin American countries (Pécaut 1987: 572). While the state's income increased four hundred percent between 1940 and 1949 (Wilde 1978: 42), with a corresponding extension of central government authority,³⁴ social expenditures were virtually stagnant between 1930 and 1950 (Pearce 1990: 38).

Other modernizing influences also simultaneously came into play. For example, the general level of education in Colombian society began to gradually improve in the 1930s, a process which accelerated after 1950 (Uprimny and Vargas

³⁴ Wilde notes that the state assumed new regulatory functions, strengthened controls over banking and commerce and constructed new communication and transportation infrastructure. New public agencies were created to oversee the expansion of the role of the state (Wilde 1978: 41-44).

Castaño 1990: 146). According to *Planeación Nacional* (National Department of Planning) the number of students entered in primary education tripled between 1960 and 1986. During the same period the number of students at the secondary level increased six fold, twelve fold in post-secondary education,³⁵ and by 1992 60 percent of Colombian students completed their secondary school education (UNICEF 1995: Table 4). The level of adult literacy has also risen from approximately 40 percent in 1940 (Sánchez 1992: 77) to 87 percent in 1992 (UNICEF 1995: Table 4).

The ideological power of the institutional Catholic Church also weakened, undermining "one of the most important bases of social stability" (Uprimny and Vargas Castaño 1990: 146). Historically, the Colombian Church is one of the most conservative in Latin America. Since the 1920s the institutional Church has opposed social organization outside of the bipartisan framework, particularly when those organizations assumed a radical or populist discourse. However, as a result of the *silent revolutions* and the circumstances around the National Front agreement, the period after the 1940s saw a gradual decline in the influence of the Church in Colombian society. (Hartlyn 1988: 83; Uprimny and Vargas Castaño 1990: 144-147; Pécaut 1988: 110-124).

3.2 New actors in Colombian society

The *silent revolutions* created new sources of power and opportunity in Colombian society outside of the traditional polity. With the sources of power came new actors and new "loads" on the political system (Wilde 1978: 41). While the parties were "still at center stage, the apron was now filling up with new characters", including the new bureaucratic and regulatory agencies of the state itself (Wilde 1978: 42). The new actors built their own organizations capable of channelling and satisfying the demands of their affiliates, undercutting the political parties and affecting both the stakes and the exercise of the political process (Wilde 1978: 42; Pécaut 1987: 500-501).

Over time, therefore, the new actors gradually eroded the power of the traditional parties, including the effectiveness of *clientelismo*, as described in Chapter 2.6, on which the traditional parties based their influence. Responding to the transformations, both parties attempted to coopt the new actors within the logic of the bipartisan framework. For example, the electoral success of the Liberal party between 1930 and 1945 was founded, in large part, on their ability to integrate trade unions and other interest groups arising from urbanization. (Pécaut 1987: 571-574; Wilde 1978: 45). However, the parties did not modernize as institutions. They remained "vertical collections of factions" based in "oligarchical mechanisms

³⁵ In the 1970s and 1980s the universities became important centers for the organized left.

created for simpler times in a much less mobilized society" and dependent on the decisions of a few men" (Wilde 1978: 46-58).

For the purpose of this study it is important to specify that not all of the *new actors* appearing after 1930 can be considered *new challengers*. While the distinctions may be arbitrary, it is useful to place the new actors in two distinct categories.

New actors as an extension of the traditional elite - As noted in Chapter 3.1, many elites adapted to structural changes in the economy and made the transition from traditional agricultural production to agro-exports, industry and service based sectors. Their interests were represented by *gremios*, business associations representing specific sectors of the economy, which "evolved to ensure the state's responsiveness to the private sector" (Pearce 1990: 72).³⁶ The *gremios* originated with the formation of coffee sector association FEDECAFE in the 1920s. They consolidated their influence in the 1940s and 1950s and were formally involved in policy making related to economic management by 1949 (Pécaut 1987: 507).

The political disintegration of the Violence strengthened the political influence and legitimacy of the *gremios*. Pécaut notes the associations appeared to be "the only institutions capable of guaranteeing a degree of cohesiveness in Colombian society" (Pécaut 1987: 507). In the post-Violence era the *gremios* have been given a growing role in government, "representing their interests as if they were the interests of society itself" (Pécaut 1987: 507). This devolution of state power effectively constitutes a gradual privatization of economic policy making. One historian calls the *gremios* a "parallel government by 1960" and a 1983 study concluded that "after the President of the Republic, the most powerful person in Colombia is the manager of [FEDECAFE]" (Urrutia as quoted by Pearce 1990: 97). The influence of the *gremios*, therefore, is also a significant factor in determining the contemporary economic policies.

As elites, the *gremios* had an historical identity and leadership role within the old bipartisan polity. However, the actions of *gremios* were increasingly conditioned by the economic interests of their members rather than political affiliation. The intervention of *gremios* had the longterm effect of depoliticizing debate around economic management and other issues related to the stability of the political system. It also weakened traditional partisan control and the ability of the parties to use economic policy for their own purposes. Importantly, however, *the gremios did not challenge elite hegemony*. When confronted by new challengers, such as

³⁶ Pearce notes that, in part, the *gremios* developed in response to the expansion of the regulatory function of the state in the post-war era, ensuring that those regulations did not infringe on private sector interests. The *gremios* have also played a decisive role in blocking state sponsored social programs (Pearce 1990: 72).

trade unions or peasant organizations, "the ruling class still united to protect common interests" (Wilde 1978: 63; Pécaut 1987: 571-573).³⁷

New actors as new challengers - The history of social organizations dates back to the 19th and early 20th century. Urban artisans and manufacturing workers formed the first labour union in 1909. As elsewhere in Latin America, militancy in the labour force grew in the 1920s (Pécaut 1987: 90-95). Of particular importance are the organized workers in the export production sector, such as bananas, oil and coffee, and it was the strikes in the export sector which most effectively damaged the national economy and foreign companies (Bergquist 1992: 55-57).³⁸

Peasant struggles for land also gained militancy in the 1920s, and after peasants were granted the right to unionise in 1931 a number of peasant leagues were registered. However, no national movement came out of the peasant struggles in the 1930s (Pearce 1990: 40-41).

The general objective of labour and peasant organizations as well as urban based social protest groups has been to redistribute the private controlled resources and to reorient the public resources. They have traditionally, therefore, been met with repressive reaction from the political and economic elites. Over time the response of the traditional party leadership to the new social movement can be summarized as follows: (i) subordination-integration under the Liberal Republic (1930-45); (ii) repression-division after 1945 under the regimes of Lleras Camargo and Ospina Pérez; and (iii) beginning in 1950, violent repression (Sánchez 1992: 87).

3.3 Gaitán and the *Bogatazo*: The national country against the political country (1940- 1949)

"In Colombia there are two countries: the political country which concerns itself with elections, its bureaucratic sinecures, its business interests, its privileges and influences.. The political country or the oligarchy are one and the same. And the national country, the people who think of their work, of their health, of their culture.. We belong to the national country, to the people of all parties who are going to fight against the political country, against the oligarchies of all parties." (Jorge Eliécer Gaitán, quoted in Bermúdez Rossi 1982: 60).

Having identified some of the main trends contributing to societal change after 1930, it is important to consider the actual events leading to the breakdown of political order in 1949. At the end of Second World War, Colombia still had an

³⁷ For example, the *gremios* were involved the formation of paramilitary groups during the 1970 and 1980s which have been used to repress trade unions and social organizations.

³⁸ The response from the government to these strikes was harsh. For example the massacre of workers and their families by government troops after a strike in the United Fruit Company banana enclave near Santa Marta in 1928. An estimated 1000 workers were killed and more than 12,000 became internally displaced (Pérez 1993: 18).

"oligarchical structure, questioned insistently by popular forces during the two preceding decades but not seriously threatened" (Sánchez 1992: 76). The high coffee prices, increased levels of imports and industrialization and agricultural expansion created a new era of prosperity. As previously noted, the prosperity was not shared by the vast majority of Colombians resulting in considerable social tension. However, Sánchez notes that "while potentially conflictive, the situation was not necessarily a revolutionary one" (Sánchez 1992: 77).

Tensions and discontent in Colombian society were given a political identity in the 1940s by a new movement led by Jorge Eliécer Gaitán, the leader of the reformist wing of the Liberal party. By the mid 1940s Gaitán created a new historical force by uniting the *marginados* (groups in civil society outside of the leadership of the parties and marginalized from the political process) across political lines. His political discourse was populist and he spoke clearly of uniting the *pueblo* (people) against the "oligarchy", the "real" country against the "political" country (Sánchez 1992: 78), "ceaselessly attack[ing] the corruption and bankruptcy of the old system" (Wilde 1978: 38). Responding to the demands articulated by new challengers and broadly felt in civil society Gaitán introduced two reformist themes into the political discourse; economic redistribution and (expanded) political participation. His populism was backed up by an ability to mobilize demonstrations of social discontent "of such magnitude that ... the forces of the status quo perceived it as a threat to the entire social edifice" (Sánchez 1992: 77).

To consolidate the new political force Gaitán attempted to escape the bipartisan divisions and symbols. *Gaitanismo* invited political forces to realign themselves in a way that would transform the nature of the traditional polity, replacing the Liberal-Conservative axis with a new class oriented axis of political confrontation. The result was a widespread political mobilization in the mid 1940s which was reflected in a dramatic increase in electoral turnouts. Sixty four percent of eligible voters cast ballots in the 1947 Congressional elections compared to 39.4 percent 1945 (Sánchez 1992: 76-80). Electoral mobilization further strengthened Gaitán's position.

"For the party oligarchies *Gaitanismo* equalled "[a] revolution which threatened the foundation of their interests" (Pearce 1990: 46). In response, the traditional parties attempted to reintegrate the new political force into the traditional framework. In 1947, Gaitán became the leader of the Liberal party, largely through the efforts of the traditional wing of the party to neutralize the new movement through cooption. The Conservatives, led by Laureano Gómez, also sought to maintain the country's social conflicts within the old vertical party divisions. The years between 1945 and 1949, therefore, saw considerable political intra-party and inter-party jockeying for position. While Gaitán attempted to organize civil society across party lines in a new axis of confrontation against the traditional elite, elements of the party elite were considering a bipartisan coalition against *Gaitanismo*. The idea of a coalition was first suggested in 1946 by former Liberal

President López Pumarejo and implemented by Conservative President Ospina Pérez (1946-50).

At the same time the leader of the hardliner Conservatives, Laureano Gómez, clearly identified Gaitán's coalition with the Liberal party rather than as an independent force. He attempted to undermine the development of *Gaitanismo* as a united front of the *pueblo* by cornering Gaitán in his role as leader of the Liberal party. Under Gómez's influence the dynamics of confrontation increasingly assumed a partisan rather than class character. A Conservative controlled para-police force, the *Chulavitas*, was established to intimidate and murder Liberal voters and by the end of 1947 political violence had claimed 14,000 victims. On February 7, 1948 Gaitán led a silent protest of 100,000 people through the streets of Bogotá, and delivered his speech for peace: "All we ask, Mr. President, is guaranties for human life, which is the least that a nation can ask" (Sánchez 1992: 79-81).

Gaitán was assassinated on April 9, 1948. Spontaneous riots, known as the *Bogotazo*, broke out in the capital city of Bogotá. The *Bogotazo* was "the greatest urban riot in the history of the Western hemisphere" (Wilde 1978: 46). It was the beginning of a multifaceted insurrection with two dominant aspects which reflected the demands of the new challengers which Gaitán had articulated. The riots have been interpreted as a *social protest* against economic disparity, corruption, speculation, and the high cost of living. However, they also constituted a *political uprising* against the old polity led by Gaitán's supporters. A revolutionary junta was created and events in Bogotá provoked riots in other parts of the country. In the two weeks following Gaitán's death "countless Colombian towns and rural districts experienced a temporary inversion of the institutional order. It seemed that a grand demolition of the oligarchical republic had begun" (Sánchez 1992: 83).

The leadership of the traditional parties managed to quickly regroup and put down the rebellion. Moderates in both parties recognized the threat to the stability of the system which the *political conflict* dimensions of the *Bogotazo* represented. Most factions recognized the need to eliminate the possibility that the *Bogotazo* could be repeated. Implicitly this meant eliminating the danger that new challengers, particularly the new urban based unions and rural peasant movements, might become independent articulators of social protest and political opposition (Sánchez 1992: 84).

In response to the violence elites attempted to build a new bipartisan consensus on five separate occasions between April, 1947, and October, 1949, including two failed governments of National Unity (Wilde 1978: 58). While trying to build a new bipartisan consensus, the moderates also attempted to integrate the new social forces unleashed by Gaitán into the traditional parties. However, the government was dominated by the Conservative party faction led by Laureano Gómez who began an armed offensive to destroy the union movement and Liberal party

structures at the local level. Gómez's offensive targeted both Gaitán's coalition and the traditional structures of the Liberal party. As official Conservative sponsored violence continued, particularly in rural areas, the Liberals withdrew from the coalitions and boycotted the 1949 presidential elections. Consequently, the killings escalated (Peeler 1992: 53).

3.4 *La Violencia* (1946-66)

The worst incidence of fighting related to the Violence occurred between 1949 and 1953 when the partisan motivations were strongest. The lowest estimates place the number of persons killed during this four year period at 145,000 (Oquist 1980: 17-18) while others contend that as many as 240,000 persons died between 1947 and 1953 (Aprile-Gnisset 1991: 11). Although the estimates of the total number of dead between 1946 and 1966 vary greatly, most historians agree that a minimum of 200,000 persons were killed.

As determined by the mobilization of civil society described in Chapters 3.2 and 3.3, the Violence was a multifaceted process whose social and political features as well as geographical focus changed as the conflict evolved over two decades. The dynamics of confrontation occurred at two distinct levels.

Firstly, the Violence had an identity within the context of the old partisan struggle outlined in Chapter 2. Laureano Gómez assumed presidency in 1950 as the leader of a hardline Conservative faction which had provoked the rupture of the bipartisan coalition governments created in the aftermath of the *Bogotazo*. Gómez continued to place the escalating conflict in bipartisan terms making no distinction between the traditional structures of the Liberal party and those elements of the party which aligned themselves with other new challengers to form the Gaitán coalition. Gómez believed that civil society had a subordinate role and that there was no such thing as *pueblo*, "only a threatening mob" (Sanchez 1992: 79). In response to the perceived threat posed by the new challengers he tried unsuccessfully to establish a corporatist state in Colombia, along the line of Franco's Spain.

In the countryside the Gómez government pursued a policy of violent and overt repression against Liberals. The violence was organized and carried out by local level Conservative political leaders and the Conservative supported *Chulavitas* parapolice force. The historical relationship between the Conservatives and the Catholic Church was also central. The *Chulavitas* and the Church played complementary roles in marginalizing, repressing and murdering Liberal supporters. In this sense the conflict also assumed a religious dimension and fervour, although this was channelled within the partisan framework (Sánchez 1992: 79, 85).

Gómez's anti-*pueblo* offensive rested on two factors that gave it an ideological coherence at both the domestic and international aspects. Domestically he claimed that there was an "organic link between Liberalism and Communism" and that "Colombia is on the brink of falling behind the iron curtain" (Gómez 1949 as quoted by Sánchez 1992: 85-86). At a speech in Medellín in 1949 Gómez told Conservative supporters "the Liberal party moves on feet of confusion and stupidity, on the legs of brutality and violence that press into its immense oligarchical belly; with a chest of ire, masonic arms and a tiny diminutive communist head" (Gómez 1949 as quoted by Sánchez 1992: 86). On the international side, Gómez's principal ally was the United States who provided diplomatic support, arms and capital (Sánchez 1992: 88). The ideological context of the Cold War and McCarthyism provided Gómez with additional legitimation (Pearce 1990: 57).

At a second level, the Violence became a challenge to the traditional elites posed by Gaitán's cross-party coalition of social forces. As it evolved over time the Violence increasingly assumed an identity within this second level of conflict, becoming "focused on the ongoing struggle for land and social mobility" (Bergquist 1992: 70-72). The roots of legal (social and non governmental organizations and non-traditional political parties) and illegal (guerrilla groups) opposition to the Colombian government which emerged in the 1970s had their roots in the period of the Violence.

For the purpose of this study the multidimensional character of the conflict may be summarized into three general processes: *terror*, *resistance* and *the breakdown of social order*.

Terror - The most visible aspect of the Violence was the mixture of official terror and scorched-earth tactics which characterized the government's offensive against the Liberals. The Violence affected the lives, physical safety, psychology, and possessions of hundreds of thousands of Colombians, leaving a tremendous impact upon the collective memory of Colombian society. "Police and army detachments arrived like cyclones to terrorize defenceless towns. Murderers, called *pájaros* (birds), could often count on an extensive network of protectors or the complicity of the authorities including political figures, who later, under the National Front, would occupy positions in Congress, the cabinet, or foreign embassies" (Sánchez 1992: 87). The *Chulavitas* parapolice was particularly infamous for its "cruelty, decapitations, mutilation, and sexual crimes" (Pearce 1990: 54).

Geographically, the terror expanded throughout Colombia's interior based on the historical patterns of party loyalty described in Chapter 2 which pitted one town against the next. While all strata of society within the Liberal party was affected, however, the impact was not equal across those groupings. "Landowners, businessmen, and the high ranking political chiefs could shield themselves from the Violence in the anonymity of the big cities or sometimes in foreign exile"

(Sanchez 1992: 90). It was, therefore, the traditional mass base of the Liberal party which suffered the most.

Resistance - The second process was guerrilla resistance which resulted in a decisive break between elements of Gaitán's coalition and the traditional Liberal party in 1952. By 1949 it was clear that the leadership of the Liberal party was unable or unwilling to stop Conservative supported violence through civil resistance. Guerrilla groups spontaneously formed from within the rank and file of the Liberal party and Gaitán's coalition to protect communities. However, guerrilla warfare assumed different characteristics from the 19th century bipartisan conflict. The Liberal elite, political leaders and landowners, did not directly participate in the fighting. As a result the war inevitably became a conflict between the government forces and resisters in civil society, assuming a "heroic" dimension which it is often compared to the Mexican revolution (Sánchez 1992: 91).

The relationship between the guerrillas and the Liberal political parties assumed a new dynamic in 1952. In August that year, the principal guerrilla leaders presented the Liberal leadership with an ultimatum: "either the [Liberal] Directorate would lead the general revolt or the guerrillas would do so on their own" (Sanchez 1992: 94). Based on historical patterns of political behaviour, the Liberals elite were instinctively drawn to finding a new mechanism of bipartisan consensus with moderate elite elements from the Conservative party rather than finding an accommodation with the guerrilla movement which had emerged from the mass base of their own party. They were already alarmed by the scope of the destruction which had been unleashed and their inability to control the guerrillas. The Liberal leadership responded through former President López Pumarejo: "If it is the last opportunity the Liberal leaders have to fulfil their historic destiny, as contemplated or interpreted by the chiefs of the armed revolt, then we are resolved to lose it! Moreover, if this means a definitive break with the *pueblo*, as the guerrillas would have it, so be it." (As cited in Sánchez 1992: 94). The guerrilla's ultimatum opened a new period of the Violence and confirmed the axis of elite-new challenger confrontation that would be institutionalized in the 1958 National Front agreement.

The breakdown of social order - The third process which derived from both terror and resistance, was that of the social effects of the Violence. For example, The Violence deeply effected the structure of rural property holding. Thousands of threatened or harassed peasants either abandoned their parcels or were forced to sell at prices far below the real value. As a result, the Violence provoked a rapid and chaotic urbanization throughout the 1950s and early years of the 1960s.

3.5 Military dictatorship (1953-1958)

In 1953 General Gustavo Rojas Pinilla staged the first military coup to occur in Colombia since 1854. Rojas held office until 1957. He was briefly replaced by a military junta which served as a transitional government until civilian rule was restored in 1958 through the National Front agreement.

The scholars cited in Chapter 1.4 usually refer to Colombia's experience with military dictatorship in black and white terms. However, the Colombian military's intervention in politics had few of the characteristics stereotypic to a Latin America coup. Rojas was placed in power through the initiative of civilian politicians and removed five years later by those same civilians. The events of 1953 coincide more closely with the historical pattern of elite accommodation through a pact rather than a classical coup. As such, the manner in which the coup took place reflects the subordination of the military to civilian power.

By 1952 Colombia seemed to be on the "verge of an irreversible social and political crisis" (Sánchez 1992: 100). Large areas of the country were devastated and the violence "followed its own dynamic [of] local and personal agendas of revenge and plunder" (Peeler 1992: 92). Peeler notes that the generalized nature of the fighting made it increasingly difficult for the party leadership to "use violence selectively for their own purposes" (Peeler 1992: 92). Of particular concern to elites in both parties was the growing independence of the guerrilla groups associated with the Liberal party. As the fighting escalated the political discourse of the guerrillas became increasingly radical. For example, in 1952 a national conference of guerrilla leaders proclaimed the autonomy of the vast Llanos region of Colombia and announced they were establishing "a popular and democratic government" to implement land reform based on the principle of "land for the people who work it" (Pécaut 1987: 560). The declaration threatened many Liberal estate owners in the region, contributing to the definitive break which occurred between the Liberals and the guerrillas in 1952.

The violence, therefore, threatened commonly held elite interests, effectively drawing moderate elements of the two leadership together. As in the past, the parties realized when the destruction "had gone too far" and they sought a new form of intra-elite/inter-party accommodation. However, after four years of fighting inter-party animosity was so deep, especially at the rank and file level, that a third actor was needed to re-establish stability while the two parties worked out a new governing pact (Pécaut 1987: 560). In this situation civilian elites "were forced to look for some new form of [temporary] ad hoc consensus" (Wilde 1978: 58) and, lacking another alternative, they "essentially thrust [General Rojas Pinilla] into power" (Hartlyn 1988: 48).

The 1953 coup occurred, therefore, at the initiative of the civilian leaders.³⁹ Negotiations took place in 1952 and 1953 between the governing Conservatives and the military with the full participation of the Liberals. Rojas initially received the support of all significant factions of the traditional parties, the military, the Catholic Church, the *gremios* and the non-communist trade unions and guerrilla groups (Hartlyn 1988: 48; Pécaut 1987: 517-518; Dix 1979: 313; Peeler 1992: 92; Wilde 1978: 58; Sánchez 1992: 100-101; Blair Trujillo 1993: 76-77; Revéz 1989: 60).⁴⁰ The leader of the Liberal party described the coup as a *golpe de opinion* (coup of public opinion) against the violence and, in a reference to Simón Bolívar, publicly praised Rojas as the second *Libertador* (liberator) (Sánchez 1992: 101). Commenting on widespread public support for the coup, Sánchez notes it is ironic that "the military was received with the widest and strongest support given to any ruler in the history of the country" (Sánchez 1992: 101).

Rojas and the military initially refused to take office. Pécaut notes that Rojas vacillated "right to the last moment, publicly stating his preference for a civilian solution" (Pécaut 1987: 518). Their reluctance was partly a matter of ideology. Intervention went against the longstanding military tradition of non-interference in political matters as described in Chapter 2.7. However, the military was also aware of the practical difficulties which taking office presented. During the pre-coup negotiations one General commented "we the military do not have sufficient capacity to govern the country" (Pécaut 1987: 518).

In establishing the characteristics of the Rojas administration it is important to note that Rojas had no organizational infrastructure or political or military base which was independent of civilian elites (Hartlyn 1988: 48; Pécaut 1987: 514-517). It was understood that the military would take their direction from the civilian politicians who continued to hold most government positions. "The same civilian elites that placed Rojas in power [also] assumed that his government would be transitory" (Blair Trujillo 1993: 77), "lasting no more than one normal four year presidential term", expiring, therefore, in 1957 (Sánchez 1992: 110).

The objectives of the civilian elite in supporting the Rojas coup were to re-establish order and contain the violence. They gave Rojas three tasks: (i) end the violence; (ii) demobilize Liberal guerrilla forces which formerly broke with the party leadership in 1952; and (iii) reconstruct the areas affected by the fighting

³⁹ Some Liberals called for military intervention as early as 1949 (Pécaut 1987: 514). Conservative leader Gómez also tried to provoke military intervention in 1948 (Sánchez 1992: 85). It is important to note that there was no military uprising or violence associated with the 1953 coup.

⁴⁰ The only initial opposition to Rojas came from the Conservative supporters of Laureano Gómez and the small Communist party (Hartlyn 1988: 48).

(Sánchez 1992: 94-101; Pécaut 1987; 560).⁴¹ Scholarly opinion is divided on the actual record and characteristics of the Rojas administration. He appears to be difficult to characterize in terms of a strict democracy-dictatorship dichotomy and Sánchez notes that "it may be impossible to find such comfortable and schematic solutions to judging the period" (Sánchez 1992: 111).⁴² However, more important for the purpose of this study is the evolution of the relationship between General Rojas and the civilian leadership which placed him in power.

Rojas broke with the traditional parties in 1955. He attempted to establish an independent political base and "supplant the traditional parties by taking away their mass support" (Peeler 1992: 92). Rojas' "third force" was built on a coalition between reformist elements within the military and Gaitán's old coalition of *marginados* (marginalized groups), many of whom had broken with the leadership of the parties in 1952 (Blair Trujillo 1993: 80). Sánchez and others note that the civilian elites who placed Rojas in power were "increasingly concerned that Rojas, who had arms but no autonomous political force, was trying to build a base through an armed forces-*pueblo* alliance, using the resources of the state to cement the alliance ... [I]n a country where *clientelismo* was deeply rooted and helped ensure the monopoly of the traditional parties, this development clearly threatened the elite" (Sánchez 1992: 108).

Historians note that the inability of Rojas to establish an independent political base may have been his greatest failure (Wilde 1978: 58-61; Hartlyn 1988: 49). Through his "erratic and arbitrary actions" Rojas alienated almost every important sector: (i) his economic policies alienated the *gremios* (Hartlyn 1988: 48; Pécaut 1987: 572; Revéiz 1989: 60), a situation which was aggravated by a sharp economic downturn in 1954 (Wilde 1978: 59);⁴³ (ii) the Church distrusted the "Peronist" trappings of the Rojas government (Hartlyn 1988: 48). A series of confrontations, including incidents where the army fired on students from the Jesuit University and tear-gassed a crowded church on Palm Sunday, widened the rift (Wilde 1978: 60); (iii) Rojas lost support within the military itself. His mix of "populism and corporatism" frightened conservative elements and threatened the institutional unity of the military. As civilian opposition grew and the Violence continued, "the officer corps came to believe that Rojas himself was a major cause of disorder" (Wilde 1978: 60); and (iv) Rojas was unable to demobilize Liberal guerrillas or establish an alliance with new challengers such as the trade union movement (Sánchez 1992: 100-110).

⁴¹ None of the scholars cited in this chapter refer to promises which may have been made to the military in exchange for their assuming power. There also does not appear to be a consensus on the motives of the military in accepting office.

⁴² The term "dictator" was first used to characterize Rojas by the Liberal press in 1955.

⁴³ The US and World Bank also opposed Rojas' "Peronist" policies (Hartlyn 1988: 48).

The attitude of the parties to Rojas began to change as early as 1954. The Liberal and Conservative parties used the violence as instruments of political mobilization, declaring through party owned press that Rojas solely was responsible for the fighting (Sánchez 1992: 109). The "press became the privileged terrain of the opposition and a pole of organization and unification for the dominant classes against the "dictator" as they now called him". Rojas weakened his position by responding with censorship (Sánchez 1992: 108-110). In 1956, the two traditional parties formed a bipartisan Civic Front. When Rojas announced his intention to stay in power after 1957, the parties were capable of mobilizing a general strike to force his resignation. A military junta was established to administer the economy and politics returned to the exclusive realm of the traditional parties (Sánchez 1992: 109-111).

4. Transition to democracy: The National Front and the return to historical constants

The National Front elite pact was a direct response of the civilian elites in the Liberal and Conservative parties to a double threat to their hegemony: (i) the mobilization of new challengers before and during the Violence escalated beyond the control of the Liberal and Conservative parties. Efforts by both parties to channel social conflict within the old bipartisan framework served to aggravate the violence rather than contain it; (ii) General Rojas Pinilla attempted to displace the traditional parties by creating an army-*pueblo* alliance based on the *Gaitanista* coalition. The new alliance was based on coopting the traditional base of the Liberal and Conservative parties in civil society.

In response to these threats, the traditional civilian elites saw the need to cooperate and restore their control of the political system "through the tested clientelistic mechanism" (Peeler 1992: 95) of an elite bipartisan accommodation. The National Front agreement, therefore, had three principle objectives: (i) to restore the Liberal and Conservative parties to political office; (ii) demobilize new challengers and rechannel social discontent through the traditional bipartisan polity; and (iii) regain the loyalty of the military and guarantee their subordination to civilian authority (Wilde 1978: 59-62; Dix 1979: 307-308; Bustamante 1989: 20-21; Blair Trujillo 1993: 81-84; Peeler 1992: 92-93).

Based on these objective and the historical context of the agreement, the National Front can be seen to have three distinct levels of interaction:

Intra-elite\inter-party - The National Front was based on a series of mutual guarantees "to address each parties fear of exclusion and repression by the other [party]" (Wilde 1878: 62). The mechanisms were based on the principles of *alteración* (alternation of political office) and *paridad* (parity between the Liberals and Conservative) (Dix 1979: 308). These guarantees were formalized in separate three written agreements negotiated between the Liberals and the Conservatives between 1956 and 1958.⁴⁴ and later entrenched in Colombia's polity through a series of amendments to the Constitution of 1886. The constitutional amendments

⁴⁴ The first agreement was negotiated in 1956 between former Presidents Lleras Camargo (Liberal) and Gómez (Conservative) at Gómez's exile in Spain. They agreed to a five point plan of action to return the two parties to power (Peeler 1992: 94).

gave institutional substance and legitimacy to what had previously been personalized inter-elite arrangements (Wilde 1978: 62).

The National Front agreement had a formal life of 16 years, remaining in effect from 1958 until 1974. Some historians argue that, in practice, the agreement was in effect for 30 years (Peñaranda 1992: 294). Elements of the National Front polity could still be identified in the 1990s in the Liberal administrations of Cesar Gaviria Trujillo and Ernesto Samper Pizano. The power sharing mechanisms included: (i) an agreement to alternate the Presidency between the two parties over a duration of four terms. The first President was a Liberal and the last a Conservative;⁴⁵ (ii) both parties received half of the legislative seats (Congress and Senate) regardless of the popular vote in a given district. The distribution of the seats within the parties was made on the basis of proportional representation;⁴⁶ (iii) all cabinet positions, appointments to the Supreme Court the public service and governorship and mayoralties were made on the basis of parity between the two parties;⁴⁷ and (iv) ordinary (nonprocedural) legislation required a two thirds majority vote to be ratified.⁴⁸

The provisions of the National Front were intended to provide guarantees for both inter-party and intra-party interests. Dix notes that "party factionalism required successive Presidents spend an inordinate amount of time and energy attempting to maintain majority support within both parties, especially through the allocation of public positions" (Dix 1979: 308). The principle of parity in government and public service appointments became entrenched in the polity through practice and continues *de facto* decades after the formal life of the National Front expired (Dix 1979: 310; Peñaranda 1992: 295; Peeler 1992: 102).

Bipartisan civilian elite-military - The military traditionally played a subordinate role in Colombian politics. Before 1953 they participated in inter-party negotiations as "the clients of a civilian notable" (Bustamante 1989: 20). The National Front marked the first occasion that the military took part in such negotiations as an actor in its own right.

Talks between civilian and military officials regarding the transition to civilian governance began as early as 1956 while Rojas was still in power. In 1957 Rojas was replaced by a military junta responsible for overseeing the transition. It was

⁴⁵ The alternation of the office of the Presidency expired in 1974.

⁴⁶ Parity in the division of legislative seats expired in 1974.

⁴⁷ A further agreement between the parties stipulated that parity in the appointment of cabinet and public service positions would be extended to 1978, "ensuring adequate and equitable participation" of both parties (Dix 1979: 310).

⁴⁸ Provisions requiring a two thirds majority for the ratification of ordinary legislation were repealed in 1968 (Dix 1979: 310).

agreed that the junta would remain in office only until the end of Rojas's official presidential term in August, 1958, and focus on economic management. The official position of the junta was that public order was primarily a political problem for civilians to resolve. At a deeper level, the role of the military in removing Rojas reflected a belief that the military by itself was incapable of ending the partisan violence and containing the new challengers (Blair Trujillo 1993: 81; Wilde 1978: 59-61; Peeler 1992: 94-95).

As noted, the objectives of the civilian elites were to remove the military from political office, regain their loyalty and guarantee the subordination of the military to civilian authority. These terms fit within the military's tradition of non-intervention in political matters. Within the new polity the military would not have a partisan identity. Rather, it would act as the guarantor of the National Front polity and defend the political system from *internal* threats (Bustamante 1989: 19-20, 31; Blair Trujillo 1993: 81-83). This represented "a fundamental redefinition of the military establishment's role in Colombian politics" and its relationship to civil society based on a new *civilian elite-military alliance* against perceived threats to common interests (Bustamante 1989: 19).

In exchange for resubmitting to civilian authority the military was granted three concessions: (i) the military received a guarantee that any "failings or excesses" committed during the period of military rule would be considered the personal responsibility of General Rojas Pinilla (Wilde 1978: 60-61; Blair Trujillo 1993: 81-84). The agreement was effectively a guarantee of impunity and nonaccountability; (ii) civilian elites agreed to support the "professionalization" of the military, in part as a mechanism to ensure its nonpartisan character. Professionalization referred to redefining the military's role in national security, modernizing the military's equipment to fight an irregular internal war, professional and ideological training abroad (primarily in the US) and large increases in the military budget (Bustamante 1989: 17-20). The military was granted relative autonomy over how the process of professionalization would occur; (iii) the military was given a role in the civilian decision-making process. For example, regional level government officials were obliged to consult with their military counterparts on issues related to public order and internal security (Bustamante 1989: 20-21; Blair Trujillo 1993: 82-84).

The National Front led, therefore, to a fundamental redefinition of the military's role in politics by recognizing Colombia would have to reorganize its internal security and defense forces in order to overcome the rural violence that had gripped the country since 1948 (Bustamante 1989: 20). Elite unity also meant that the institution would no longer be used in party warfare between the Liberals and Conservatives. However, loyalty to civilian elites remained after 1958, but it was no longer based on its traditional strong ties to the Conservative party (Blair Trujillo 1993: 88).

Traditional elites-new challengers - The final axis of the National Front agreement is characterized by the restrictions it placed on new challengers' participation in the democratic process: (i) no new challengers were involved in negotiations leading to the National Front agreement; (ii) parties other than the Liberals and Conservatives were explicitly excluded from participating in the electoral process by the amendments to the Constitution of 1886 which institutionalized the National Front (Sánchez 1992: 113). Any non traditional candidates would have to run under either a Liberal or Conservative banner (Peeler 1992: 95); (iii) the National Front contained no provisions regarding the eventual broadening of political participation; (iv) the agreement was a political document and included no social content to address historical issues, such as land reform, or changes in society resulting from the silent revolutions occurring after 1930 (Wilde 1978: 68; Sánchez 1992: 115).

This study argued in Chapter 3 that the traditional mechanisms for bipartisan accommodation and control of the political system broke down in the 1940s as the polity was personalistic, informal and: (i) unable to accommodate the demands of new challengers in civil society; (ii) channel those demands through the old bipartisan rivalry; and, consequently; (iii) unable to make the transition to a more broadly based polity.

The National Front resurrected and institutionalized the pre-1953 polity and "remarkably represented little more than that" (Wilde 1978: 62). On the one hand the agreement solved the historical problem of providing guarantees that a given party would not be excluded from the rewards of power. However, the National Front included no provisions which addressed the structural changes in society which led to the breakdown of the old system and the Violence. In explicitly excluding new challengers, establishing a civilian elite-military alliance and redefining the military's role as the guarantors of internal security the National Front established the context for the contemporary crisis of political violence and human rights violations.

Ironically, the National Front also undermined the intra-party mechanisms of control, often referred to as *depolitización partidista* (depolitization of the parties). Paradoxically, bipartisan unity under the 1958 National Front undermined the mechanisms of social control held by the traditional elites. Historically, the "irreconcilable" enemy had been anyone who belonged to the other party. With the National Front agreement, Conservatives and Liberals shared power and members of both parties eventually voted for a president of the other party. The depolitization eroded the partisan rationale and party loyalty on which the stability of the traditional political system was based, further fragmenting the political system (Umprimny and Vargas Castaño 1990: 145).

5. The crisis of the Colombian state and human rights violations

Chapter 5 will consider the legacy of the National Front elite pact and the institutionalization of Bolívar's knot in Colombia's contemporary polity. The general period under review will be 1958 to 1995. However, the empirical evidence presented in Chapter 5 will focus on the five years between 1990-1995 which include the administrations of Liberal Presidents Cesar Gaviria Trujillo (1990-1994) and Ernesto Samper Pizano (August 1994-). Focusing on this time period permits an analysis based on the most current information.

Chapter 5 will contrast empirical evidence related to the actual outcomes of the National Front pact against: (i) the outcomes assumed by elite pact scholars as discussed in Chapter 1.4; and (ii) constitutional and legal mechanisms and democratic institutions existing in the formal Colombian polity which guarantee political participation, pluralism and the protection and promotion of human rights. It is important to state at the outset that the restricted nature of Colombia's democratic polity *can not* be explained by authoritarian reversal or "slow death" as argued by O'Donnell and others in Chapter 1.4. Rather, the National Front agreement, and the subsequent pacts of autonomy and impunity outlined in Chapter 6, institutionalized a *civilian elite-military alliance* based on the protection of common "vital interest" held by those two actors against new challengers in civil society. Under this civilian-military pact *the military remains subordinate to civilian authority*. As their incentive for entering into the pact the military has been granted growing autonomy by civilian politicians as a matter of state policy. Consequently, decisions on basic social problems are interpreted, first and foremost, as military problems and force has become a fundamental part of the political order.

In this situation contradictions abound, prompting some human rights observers to claim that Colombia has a *dual human rights policy* (*Comisión Andina de Juristas* 1994: 2) Colombia retains the appearance of a liberal democracy and successive governments have stated that ending political violence and human rights violations is their first priority. At the same time, agents of the state continue to commit violations with impunity. State institutions often appear to be working at cross purposes with each other, at the same time protecting and committing

violations.⁴⁹ According to one human rights observer "on the one hand we have the constitution, laws and words. On the other hand we have blood and repression. These are two parts of the same deliberate policy".⁵⁰

5.1 Crisis of legitimacy of the Colombian state

The current situation in Colombia is characterized by extreme levels of political violence which are a result of *a crisis of legitimacy of the Colombian state*. The crisis of legitimacy is both one of governability and the legitimacy of the institutions of the state in the eyes of civil society. It is the direct legacy of the historical constants described in Chapters 2, 3 and 4 and the institutionalization of those constants in Colombia's contemporary polity through the National Front elite pact. The crisis appears to have deepened during the main period under review in this chapter as the country's political institutions become "increasingly incompatible with the process of modernization in Colombia" (Palacio and Rojas 1990: 70-73). According to Colombian Prosecutor General, restoring the legitimacy of state institutions in the eyes of civil society is the most critical step in solving Colombia's problem of violence (*Procuraduría General de la Nación* 1994: 46-48).

As they interact, the different elements of the crisis of legitimacy create the impression that political violence in Colombia occurs on a random basis and is beyond the control of the state. This position is frequently taken by the Colombian government when explaining its human rights record in the face of international criticism. However, this study has argued that the violence is a direct consequence of political choices, made by civilian politicians within a formal democratic framework, regarding political participation, the management of social conflict and policy related to public order.

For the purpose of clarity it is important to briefly identify and summarize the elements of the crisis. This summary constitutes the overall analytical matrix within which the empirical information on human rights violations can be considered.

(i) Almost 40 years after the National Front agreement the Colombian political system remains dominated by the Liberals and the Conservatives parties. The system is effectively closed to participation from other sectors of Colombian society. At the same time, the membership base of the traditional parties has become increasingly narrow as a result of the breakdown of traditional mechanisms of control and, as institutions, the parties are being supplanted by

⁴⁹ As in the case of tensions between the military and the state's human rights agencies.

⁵⁰ Interview, *Comisión Andina de Juristas*, Bogotá, 2 May, 1993.

other elite structures such as the *gremios*. The closed nature of the political system has three significant implications in the contemporary polity: (a) the political system is increasingly fragmented and beyond the control of any given set of actors; (b) democratic institutions do not serve either as a channel for concerns held in civil society or as a mechanism for broad public debate; consequently (c) democratic institutions are unable to mediate or resolve social conflict.

(ii) The disparity between rich and poor continues despite rapid economic growth since 1958. Almost half of all Colombians lived below the poverty line in 1994 and new wealth created by recent economic reforms has only benefited a small sector of Colombian society. Disparity and the closed political system have been accompanied by a corresponding increase in social protest since the 1970s. The protest comes from both traditional social organizations described in Chapter 3 and a multitude of new organizations, including women's groups, environmentalists, community, student and church based organizations and numerous sectoral based organizations. The vast majority of these groups are legally constituted and "in a nation atomized by interest groups, are creating politics without [the government or the guerrillas]" (Chernick 1994: 14). These organizations present a growing challenge to the government, particularly in their ability to obstruct the implementation of free market economic reforms.

(iii) All levels of social conflict have been militarized. As described in Chapter 2.7 the Colombian military has historically been a weak institution subordinated to civilian authority. Through the terms of the National Front agreement the subordinate relationship was institutionalized on the basis of protecting commonly held civilian elite- military interests. However, the National Front also established the conditions for military autonomy from civilian authority in pursuit of protecting those common interests. The rationale for military autonomy is reinforced by the dependence of civilian elites on the military's support to repress political opposition originating from new challengers. In this context, civilian officials have given the military a growing role in defining state policy related to central political problems which should be under exclusive civilian control. In particular, the military has considerable influence in defining the ideological rationale and implementing policy related to public order, social conflict and the ongoing war with the various guerrilla groups.

(iv) The administration of justice appears to be breaking down. Three aspects related to the justice system and the principle of accountability are relevant here: (a) the judicial system has been politicized through the habitual use of state of emergency powers since 1948 to repress legitimate social protest; (b) agents of the state responsible for human rights violations enjoy almost absolute impunity. There are effectively no sanctions to deter them from committing violations; and (c) the justice system is ineffective in dealing with escalating common crime. Legal reforms, the legislative development of the 1991 Constitution and the allocation of new resources to the justice system have focused on containing social protest

rather than dealing with common crime or the implementation of human rights guarantees.⁵¹

The elements of the crisis interact with each other. They have a cumulative effect and it can be difficult to distinguish the push of one factor from the pull of another. However, the overall impact is to undermine the legitimacy of democratic institutions in the eyes of civil society. Large sectors of the population do not see themselves as stakeholders in the democratic process. Consequently, they do not identify with the state nor do they feel morally bound by the decisions taken within democratic institutions. The effect of impunity enjoyed by agents of the state is particularly corrosive as it undermines the basic tenants of the rule of law and accountability. One highly visible consequence of the crisis is that violence has become generalized in civil society as at large. The majority of violent deaths actually occur as the result of common crime rather than political or social confrontation. More than 28,000 homicides were recorded in 1993, giving Colombia the highest per capita murder rate in the world (*Justicia y Paz*, Vol.7 No.2, 1994).

5.2 Duality: The paradox of democracy and human rights in Colombia

Chapters 5.2 and 5.3 will discuss the *duality* of the Colombian human rights polity. In this context, duality is defined as the immense disparity between the official polity and the reality of the government's actions, or the "difference between what is said and what is done" (*Comisión Andina de Juristas* 1994: 1). To establish the existence of this duality, Chapter 5.2 will review formal guarantees for political participation, pluralism and human rights while Chapter 5.3 will contrast those guarantees with the government's actual performance.

5.2.1 Democratic participation

Chapter 1.3 outlines the procedural minimalist definitions of democracy used by scholars employing elite pact related theories. Based on the formal characteristics of the Colombian system of governance it has been argued by these scholars that Colombia is, in fact, a successful democracy. Democratic guarantees are based in the Colombian Constitution of 1991 and the legislative development of the constitution. The following are a sample of those guarantees:

Article 1 of the Constitution of 1991 defines Colombia as "organized in the form of a united Republic, decentralized with autonomy in its regional entities,

⁵¹ A considerable portion of the resources of the legal system are also directed towards prosecuting drug traffickers.

democratic, participatory and pluralistic, and founded in respect for human dignity."

Article 2 declares that the objectives include "facilitating the participation of all in that affect their lives and the economic, political, administrative and cultural well being of the nation."

Article 3 continues that "sovereignty rests exclusively in the people from whom all political power emanates."

Article 40 of the Constitution of 1991 guarantees that "every citizen has the right to participate in the creation, exercise and control of political power". Article 40.3 establishes the right of Colombians to "create parties, movements, political organizations without any restrictions; to participate in these groups freely and spread their ideas and programs."

Elections are held in Colombia every four years. The last elections of 1990 and 1994 were considered free and fair by the international community despite high levels of political violence.⁵² There were no official restrictions placed on political parties which might inhibit their participation in the electoral process. Furthermore, no sectors of the electorate were restricted from participating in the electoral process or assuming office if elected.

The elections of 1990 and 1994 were dominated by the Liberal party. Liberal Ernesto Samper Pizano became President in August, 1994, replacing former Liberal President Cesar Gaviria Trujillo (1990-1994). Samper narrowly defeated Conservative candidate Andrés Pastrana. Four candidates from non-traditional parties also participated in the campaign. Samper's Liberal party won a clear majority in Senate and Congressional elections held in March, 1994, and 22 of 33 positions of governor in the October, 1994 departmental elections. Liberal victories in the 1990 and 1994 elections has led many analysts to conclude that the party is "now fully in control of the country's destiny" (Chernick 1994: 14). However, candidates from non-traditional parties performed better in the October, 1994, municipal elections, winning over 30 percent of the mayoral positions (*Cambio 16* November, 1994).

5.2.2 *State policy regarding the protection and promotion of human rights*

Three mechanisms provide the framework of the Colombian state's human rights policy:

⁵² For example, three presidential candidates were assassinated in the 1990 elections.

(i) The international conventions to which Colombia is a signator establish the minimum standards for human rights guarantees on which national law is based. Article 93 of the Colombian Constitution states that obligations under international treaty prevail over national law, and that the provisions of the constitution are intended to conform with those treaties. Articles 93 and 214.2 further guarantee that fundamental human rights as defined by International Humanitarian Law can not be suspended while a state of emergency is in effect. Depending on the nature of the convention, these human rights guarantees may extend into jurisdictions as diverse as the labour code, programs related to women and children and the healthcare system;

(ii) Articles 11-93 of the Constitution of 1991 provide extensive human rights guarantees which extend to third generation human rights, such as economic, social, cultural, consumer and environmental rights (Articles 42-82). Specific articles will be introduced in Chapter 5 as they relate to the given form of human rights violation which is being reviewed. The human rights guarantees found in the 1991 Constitution have been described as the most comprehensive and progressive in Latin America. According to an America's Watch report the constitution's "mechanisms [for the protection of human rights] reflect the most advanced legal analysis ... they demonstrate an authentic concern for human rights and the recognition of the urgency of restoring a coherent political institutions to protect human dignity" (Americas Watch 1992: 138);

(iii) Human rights guaranteed under international treaty and the Constitution of 1991 are implemented through the legislative development of those mechanism. The enforcement of human rights is the responsibility of the state human rights bureaucracy.

Successive Colombian governments have promised full implementation of all human rights guarantees as defined under national law and international conventions. Former President Cesar Gaviria took initiatives early in his administration which were seen as important prerequisites for reducing political violence. Gaviria introduced a policy of "political opening" to bring traditionally marginalized sectors into the political process. The cornerstone of the policy was a new constitution, ratified in July, 1991. The constitution was written by an elected constituent assembly, which included participation from across the political spectrum. Peace agreements were also signed with five smaller guerrilla groups between 1990 and 1993, ending nearly a decade of negotiations.

In his August 1994 inaugural speech, President Samper stated "in my government human rights will be respected not at the point of a gun or through [human rights] defense agencies, but as the natural development of my profound conviction that no state can demand the respect of its citizens if [the state's] own agents act to violate the rights of those citizens ... we will end impunity" (*Presidencia de la República 1994c*). Many observers were optimistic about initiatives taken by the

President Samper government during its first months in office. The President acknowledged that agents of the state were responsible for violations and said that "internal conflict cannot be used as an excuse for violations of human rights and international humanitarian law" (*Presidencia de la República 1994c*). However, he disputes statistics presented by human rights organizations.

Shortly after the election President Samper issued a seven point human rights strategy, including measures to provide more internal control within the military (*Presidencia de la República 1994c*). In addition, Samper: (i) appointed a High Commissioner for Peace with a mandate to explore negotiations with the remaining guerrilla groups and took steps to open a dialogue; (ii) invited the UN Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions and the Special Rapporteur on Torture to visit Colombia in 1994 and invited Amnesty International to establish a permanent observer;⁵³ (iii) facilitated the visit of the Representative of the UN Secretary-General for Internally Displaced Persons to Colombia in October, 1994; (iv) ratified the Second Geneva Protocol and promised measures to "normalize" internal armed conflict; and (v) promised to take measures against impunity, to "eradicate" paramilitary groups, and to provide assistance for victims of human rights violations and persons displaced by armed conflict.

President Samper presented these initiatives as part of a comprehensive anti-violence strategy to "protect the security of citizens" which will also include measures to reduce common crime. A similar comprehensive anti-violence policy was presented by Gaviria when he assumed office. In addition, the Samper government's economic strategy included programs directed at alleviating poverty. Taken together, these initiatives address the fundamental aspects of political violence and human rights violations.

Internationally, the Colombian government has been very concerned with its image since the mid-1980s. The government's sensitivity is due, in large part, to free market economic reforms which create pressure on the government to attract new foreign investment. According to President Samper "a policy of defense of human rights has become a condition for opening new markets, attracting investment and access to strategic materials" (*Presidencia de la República 1994c*). The government maintained an aggressive international public relations campaign to counter criticism. It often disputed statistics and challenged both the credibility and political bias of critical national and international human rights reports.

⁵³ Amnesty International declined the invitation as a matter of policy.

5.2.3 *International human rights obligations*

Colombia is a signator to most major international and regional human rights treaties through its ratification of various United Nations (UN), Organization of American States (OAS) and International Labour Organization (ILO) instruments. These include: the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination Against Women, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of the Child. Colombia has ratified ILO Convention 169 (Indigenous and Tribal Peoples), the American Convention on Human Rights, including accepting the jurisdiction of the Inter-American Court on Human Rights, and the Inter-American Convention to Prevent and Punish Torture. Colombia is also a signator to the Geneva Protocols.

There have been three important exceptions to Colombia's observance of international instruments: (i) Colombia has not yet ratified ILO Convention 138 relating to child labour; (ii) Colombia ratified the Second Protocol of the Geneva Conventions relating to internal conflict in December, 1994, after 15 years of debate. There were no reservations in the implementing legislation; and (iii) Colombia signed the Inter-American Convention on the Forced Disappearance of Persons in June, 1994. Implementing legislation for convention approved by the Senate in October, 1994, included three significant reservations related to the military justice system and the concept of due obedience. The implications of those reservations are considered in Chapter 6 of this study. The reservations were controversial and as of February, 1995, the proposed legislation had not been presented to Congress. Human rights groups were lobbying to defeat the legislation rather than see the treaty ratified and the exceptions entrenched in Colombian law.

5.2.4 *The Colombian Constitution of 1991 and state human rights agencies*

The Colombian state has three official human rights agencies mandated by the constitution to monitor and enforce the observance of human rights guarantees. The *Procurador General de la Nación* (Prosecutor General) is responsible for investigating alleged human rights abuses committed by agents of the state (Article 277). The Prosecutor is mandated to receive human rights complaints through a network of regional offices, investigate those complaints and apply administrative discipline in cases where guilt is established. The most severe form of administrative discipline is the dismissal of a public official. Actions taken by the Prosecutor General are intended to complement other judicial processes as proscribed by ordinary law, in the case of civilian employees, or the military justice system where members of the public forces are involved. The Prosecutor's

staff includes a special Delegate for Human Rights.

The 1991 Constitution also establishes the office of the *Defensor del Pueblo* (People's Defender) (Articles 281-84). The People's Defender is appointed by the President and functions as an Ombudsperson. The Defender is mandated to receive complaints, investigate and denounce human rights violations and publish an annual report but has no formal judicial power to prosecute cases. Work is coordinated with the Prosecutor General under the authority of the *Ministerio del Público* (Public Ministry).

The office of the *Consejero Presidencial para los Derechos Humanos* (Presidential Advisor for Human Rights) is an official advisory body, first to the President and in general to the government and the state. The Presidential Advisor develops analysis and policy, takes initiatives to promote a culture of human rights in Colombia and often acts as an official spokesperson at the national and international levels. In addition, some sections of the Public Forces have their own internal human rights offices. During the 1994 election campaign President Samper promised to strengthen these offices "to promote respect for human rights in the national police and armed forces, and to provide for better internal control..." (*Presidencia de la República* 1994c). Samper promised to establish human rights offices in the Defense Ministry, in all of the regional military battalions and to improve human rights education for members of the Public Forces.

5.3 Official human rights policy: Rhetoric and reality

In total, 14,865 persons were officially reported killed in politically motivated violence in Colombia during the four year administration of President Cesar Gaviria (1990-1994) (*Justicia y Paz*, Vol.7, No.2 1994: 21). Amnesty International reports 20,000 political motivated killings between 1987 and December, 1993 (Amnesty International AMR 23/01/94: 1). Most political violence took place in the context of the 40 year old armed conflict between the government and various guerrilla groups.⁵⁴ Perhaps more importantly than the actual armed confrontations between the government and guerrilla forces, the conflict created the conditions and broader ideological rationale for human rights abuses committed against civilian non-combatants, as seen in statistics. Of the almost 15,000 persons killed between 1990 and 1994, 5,358 died in confrontations between government and the guerrillas. Many were civilian non-combatants caught in the crossfire. The remaining 9,507 victims died as a result extra-judicial killings or other forms of abuses committed in non-combat situations, almost twice as many as were killed in the actual fighting (*Justicia y Paz*, Vol.7, No.2 1994: 21). The Prosecutor

⁵⁴ Colombia has the oldest guerrilla insurgency in Latin America. It predates the Cuban revolution and the rise of guerrilla groups in other Latin American countries which occurred in the late 1960s and 1970s.

General confirmed that "the majority of human rights complaints made against members of the public forces do not result from situations of combat" (*Procuraduría General de la Nación* 1994: 48). Tens of thousands of Colombians were also the victims of torture, detention under state of emergency laws and other forms of violations including forced disappearance.

Despite official policy the weight of evidence, gathered over decades by reputable national and international organizations and the state's own agencies, concludes that agents of the Colombian state are the principle violators of human rights. In 1994 Colombian and international human rights organizations told the UN Commission on Human Rights that "there exists a pattern of serious, persistent and systematic violations of human rights violations ... the Colombian state is the principle party responsible for attempts made against the right to life for political or presumably political reasons" (UN doc. E/CN.4/ Sub.2/1994/NGO/29 para. 6). According to the Colombian Prosecutor General "Colombia's human rights situation has seriously deteriorated ... and is now reminiscent of the experience of many Latin American societies in previous decades ... it is of the gravest concern that a democratic government would register such a high numbers of [human rights] abuses" (*Procuraduría General de la Nación* 1994: 10-11).

In his 1993 report, the Prosecutor General found that the high incidence of violations is a consequence of "the state's lack of a clear and policy and strategy regarding human rights which is evident in the actions of the security forces" (*Procuraduría General de la Nación* 1993: 46-47). The Special Representative to the UN Secretary General concluded in 1994 that where human rights programs did exist they were frequently "ad hoc", "lacking coherence" and "out of touch with reality". "There appears to be a serious problems with the implementation of such programs" (UN doc. E/CN.4/1995/50/Add.1 para.124). These sources confirm the criticisms frequently made by many human rights organizations who accuse the government of having a "cynical" or "double policy" on human rights where "the distance between the government's words and its actions has grown intolerable" (*Comisión Andina de Juristas* 1994: 2). Most importantly, the Colombian government has been criticised by all levels of the international human rights community, including by numerous UN Special Rapporteurs, for "damning evidence" which demonstrates "the absence of political will to overcome the human rights crisis" (UN doc. E/CN.4/Sub.4/1994/NGO/29 para.3e, also see Amnesty International AMR 23/01/94: 1-7).

According to the Andean Commission of Jurists "the first real actions of the Samper government raise doubts regarding the cohesiveness and strength of its [human rights] policy" (*Comisión Andina de Juristas* 1994: 2). It is not clear that a consensus exists within the government on human rights policy and some suggested the government is not strong enough to move a progressive policy through the conservative Congress.

At the national level, empirical information presented in Chapter 5 indicates that the human rights guarantees found in the Constitution of 1991 are not respected by the Public Forces. The government of Colombia has not taken serious measures to enforce their compliance with official human rights policy. The government and the military both deny that human rights violations are systematic or that they occur as a matter of official government policy. Instead, they argue that the violations are "isolated and unrelated cases" committed by persons "acting beyond their authority" and, therefore, "their actions do not represent the institutional policy of the state" (*Presidencia de la República* 1994a). However, human rights organizations point out that military and police act within the legal framework of state of emergencies powers and the government's strategy of "total war", declared by former President Gaviria in 1992, which specifically targets civilian non-combatants. Human rights violations, therefore, are committed within official policy related to the management of public order.

In addition, the ability of the state's human rights agencies to monitor and enforce guarantees is severely limited. Reports and statements issued by the Prosecutor General and the People's Defender have been increasingly critical of the government's human rights record and have been important in documenting the nature and extent of violations committed by agents of the state. In this sense, state agencies create political space for public debate regarding human rights policy and violations. However, both offices have limited resources and judicial power. Officials complain that their investigations are often hindered by other agents of the state, primarily the armed forces and the national police. According to the Prosecutor General, the military's "misunderstanding of esprit de corps ... creates problems in investigations, places obstacles in the process, and impedes the effectiveness of the justice system" (*Procuraduría General de la Nación* 1994: 17). The Special Delegate for Human Rights noted that "our investigators are the targets for threats or violence when they investigate human rights cases [where the military is involved]. I myself have received death threats".⁵⁵ Also "there seems to be little high level coordination between the government's human rights organisms and with other ministries such as Justice" which impedes the effectiveness of their work (UN doc. E/CN.4/1993/61/Add.3 para.25).

It is important to also note that statistics reported by the state's human rights agencies represent the minimum instance of a given violation. Many cases go unreported. For example, in many regions of the country the state human rights agencies are located inside or near the bases of the same military units which are accused of committing the violations. This deters victims of violations from filing a report. The Special Delegate for Human Rights of the Prosecutor General's office noted "there is a fear, on the part of many people bringing [human rights]

⁵⁵ Interview, Special Delegate for Human Rights of the Prosecutor General's Office, Bogotá, 8 October, 1994.

complaints that their cases will go nowhere. Also, there is a fundamental lack of credibility of the institutions of the state in general, and agencies responsible for human rights in particular" (*Caja de Herramientas*, September 1994).

The working relationship between NGOs and the Colombian government has been strained and the former President Gaviria was publicly critical of their work. State of Emergency legislation invoked in 1992 specifically identified groups alleged to support the guerrillas, opening all NGOs to investigation and prosecution, sometimes under military jurisdiction. Reflecting the attitude taken by many in the military towards human rights organizations, Major General Bonett, Commander of the Second Division of the Armed Forces wrote "the subversives have managed to win influence in the UN, the OAS, the Congress of the United States and the non-governmental organizations" (*El Tiempo*, 3 October, 1994). Many human rights workers believe the government's public disposition created a hostile political climate in which abuses committed against NGOs occurred.

President Samper initially appeared to take a more constructive approach. Shortly after taking office Samper said he "considers NGOs to be [the government's] allies in safeguarding fundamental rights" and in October, 1994, he established a joint NGO and government commission to investigate the 1990 Trujillo massacre in which 60 persons were killed by a paramilitary group (*Presidencia de la República* 1994c). However, human rights workers continue to report they are targeted for abuses. For example, the President of the *Asociación de Familiares de Detenidos-Desaparecidos* (Association of Families of the Detained-Disappeared; ASFADDES) received death threats after making public statements critical of President Samper's human rights record.

Internationally, the Constitution of 1991 is generally thought to comply with or exceed international standards, although the development of legislation to implement those rights has frequently not yet occurred (Americas Watch 1992). Colombia has, in large part, fulfilled its formal reporting obligations to the various UN human rights bodies. However, it has been repeatedly criticized for the gap between "laws and intentions and their implementation" and for "lacking factual information regarding the actual situation" related to a particular issue and the implementation of programs (UN doc. CERD/C/191/SR.950 1992 para. 45). For example, Colombia was asked to resubmit its 1993 report to the committee monitoring the Convention on Rights of the Child. The committee was concerned "over the significant gap between the laws to protect and promote the rights of the child and the practical application of those laws ... and discriminatory and adverse social attitudes and practices, particularly among law enforcement officials, towards vulnerable groups of children" (UN doc. CRC/C/15/Add.15 para. 6.).

Colombia has "repeatedly been in non-compliance with the recommendations and decisions formulated by international organizations responsible for the protection of human rights" (UN doc. E/CN.4/Sub.2/1994/NGO/29 para.3g). For example, its

non-compliance with the decisions of the Interamerican Commission on Human Rights was described as "notorious" (UN doc. E/CN.4/Sub.2/1994/NGO/29 para.3g). It was also repeatedly criticised by international monitoring bodies for the lack of progress in improving its human rights record. The Special Rapporteur on Torture expressed his "consternation" at the "continued widespread use of torture" despite numerous recommendations in his previous reports (UN doc. E/CN.4/1994/31 para.188). The Rapporteur for Extrajudicial, Summary or Arbitrary Executions reported that he "continues to receive a large number of allegations against agents of the Colombian state concerning the violation of the rights to life. It is particularly disturbing to note that similar allegations have now come before the Special Rapporteur for many years without any apparent improvement in the situation" (UN doc. E/CN.4/1994/7 para. 238).

In the same light, the government appeared to take advantage of the complexity of the human rights situation to obscure its own responsibility for violations, claiming that much of the violence was beyond its control. One Colombian representative told the UN Committee on Economic, Social and Cultural Rights that "the violence of the drug cartels and the guerrillas is the main cause of human rights violations..." (UN doc. E/C.12/1991/SR.17 para.72). This position has been repeated by Colombian officials on numerous occasions, including in the inaugural speeches of Presidents Gaviria and Samper. However, the claim is not supported by the government's own statistics, including the annual reports of the Prosecutor General and the People's Defender. The Representative of the Secretary-General for Internally Displaced Persons noted "the complexities, undeniable though they may be, do not absolve the government of its responsibilities" (UN doc. E/CN.4/1995/50/Add.1 para.124.).

5.4 Actors in the violence

For the purpose of this study it is important to distinguish between the actors and levels of political violence and analyze the interaction between them. The distinctions are important insofar as they establish what role agents of the state play in Colombia's political violence. There are at least four distinct forms of violence, and actors associated with them, in Colombia. These include violence committed by the state (the Public Forces), violence against the state (guerrilla organizations), para-state violence (paramilitary groups in rural areas and parapolice in urban areas) and commercial violence (drug traffickers).

5.4.1 The Public Forces

According to the Andean Commission of Jurists, the Public Forces were responsible for 54.2 percent of the total number of recorded human rights violations which occurred between January, 1993, and June, 1994. This figure increases to 72 percent when violations committed by paramilitary groups, alleged

to be supported by the Public Forces, are included (*Comisión Andina de Juristas* 1994: 1). The church sponsored *Centro de Investigación y Educación Popular* (Center for Popular Research and Education; CINEP) attributes 65 percent of reported violations to agents of the state (CINEP 1994a: 67).

In his 1994 report the Prosecutor General records 7,598 formal complaints of human rights violations made against members of the Public Forces between 1991 and 1993, including 68 massacres (*Procuraduría General de la Nación* 1994: 10). The National Police recorded the highest number of complaints, which the Prosecutor General attributed, in part, to police participation in quasi-military operations against drug traffickers. For example, an estimated 100 civilians were killed in operations to recapture drug lord Pablo Escobar (*Cambio 16*, 10 February, 1994). Commenting on the discrepancy between state policy on human rights and the high incidence of violations the Prosecutor concluded "the erratic behaviour of defense and security agencies in terms of human rights violations appears to be an internal characteristic of these organizations". He pointed out that Colombians "perceive the state's organisms of defense and security as the most repressive, most aggressive, in that they apparently use two means in their dealings with civil society; verbal and psychosocial mistreatment on one hand and torture, disappearance and murder on the other" (*Procuraduría General de la Nación* 1994: 83).

Impunity is the central issue related to human rights abuses committed by members of the Public Forces. In 1993-94, the Prosecutor General estimated that the rate of impunity was 97 percent, meaning that only three percent of reported violations resulted in penal sanctions. Only 10 percent of cases reported to the Prosecutor General during that period resulted in an investigation. Unofficially, Colombian human rights organizations place the impunity rate at over 99 percent. The issue of impunity has also been repeatedly raised by various UN human rights bodies.

Human rights organizations note that the statistics related to the military likely understate the case as members of the armed forces often try to hide their responsibility for violations. Violations which occur in non-combat situations are often blamed on the guerrillas. Dead civilian victims are also dressed in guerrilla uniforms and it is claimed they were killed in combat. The Andean Commission of Jurists reports such instances are "not isolated cases but a persistent pattern of violence. Between January and September of 1993 alone there were 23 cases" (*Comisión Andina de Juristas* 1994: 4). Two UN Special Rapporteurs also concluded that "civilians killed in combat are later presented to the public as guerrillas, their corpses being dressed in military uniforms and guns ... placed in their hands" (UN doc. E/CN.4/1995/111 para.26).

In 1993 the public forces employed 234,251 persons, or 70 percent of all central government employees, causing one business journal to conclude that "violence

is the biggest employer in Colombia" (*Portofolio*, 13 September 1993). Defense and security expenditures were projected to be 16.4 percent of the 1994 federal budget. This compares against nine percent for all social expenditures (*Fedesarrollo* 1994). The defense budget increased 56 percent in real terms and 25 new mobile brigades incorporating 23,000 soldiers were created in 1993 following the declaration of "total war" (CINEP 1994a: 76).

5.4.2 *Guerrilla organizations*

The Andean Commission of Jurists estimates that guerrilla groups were responsible for 25 percent of recorded human rights violations, where the author was identified, committed between January, 1993, and March, 1994 (*Comisión Andina de Juristas* 1994: 1). Other human rights groups place the number slightly lower. It appears that the instance of violations committed by the guerrillas has increased in the past year, possibly as a result of internal control problems. There are currently two main armed opposition groups operating in Colombia, the *Fuerzas Armadas Revolucionarias de Colombia* (Revolutionary Armed Forces of Colombia; FARC) and the *Ejército de Liberación Nacional* (National Liberation Army; ELN). Dissident factions of the *Ejército Popular de Liberación* (Popular Liberation Army; EPL) are also still active. Together these groups are thought to have 12,000 combatants under arms.

Five other smaller guerrilla groups have recently demobilized. In 1990, President Gaviria signed peace agreements with the *Movimiento 19 de Abril* (Movement of April 19; M-19), *Quintín Lame*, the *Ejército Popular de Liberación* (Popular Liberation Army; EPL), and the *Partido Revolucionario de los Trabajadores* (the Revolutionary Worker's Party; PRT). Negotiations with these groups began during the previous Betancur and Barco administrations. In 1993 Gaviria also signed an agreement with the *Corriente de Renovación Socialista* (Movement for Socialist Renovation; CRS). By July, 1994, the government estimated that 5,200 former guerrillas were participating in "reinsertion programs", although "reinsertees" point out that money promised for the programs frequently does not arrive and they are primary targets for human rights abuses.⁵⁶

The guerrillas have been weakened by the same *silent revolutions* which undermines the political power of the two traditional parties. According to Antonio Navarro Wolff, politician and leader of the demobilized guerrilla group M-19, "our original idea was that people would take up arms and head to the mountains as a result of general dissatisfaction with the politics of the country. This has occurred in other historical periods... But we discovered that Colombia was a much more urban country than we believed - that people in urban areas are reluctant to take

⁵⁶ Interview, *Corriente de Renovación Socialista*, Bogotá, 6 October, 1994.

up armed action in the mountains... We also discovered that no one has been able to create an army in the city".⁵⁷

The guerrilla's ideological orientation differs by group, but mixes Colombian populism with different interpretations of socialist or Marxist thought. Although issues vary by region, guerrilla groups have historically been involved in land struggles and they appear to retain support in rural areas throughout the country. The government claims that the guerrillas are common criminals and many in Colombia believe that the guerrilla movement has lost its "historical significance", particularly in the light of their reduced rural support base (*El Tiempo*, 20 November, 1992). However, a report prepared for the European Community found "interviews ... left us no doubt that the guerrillas have a clear political agenda" (*Asociación SETA* 1993: 9).

As protagonist in an armed conflict the guerrillas share a degree of responsibility with the Colombian state, and other actors, for the generalized climate of violence. Guerrilla spokespersons have repeatedly declared their intention to respect international protocols on armed conflict and Amnesty International notes "guerrillas have rarely committed indiscriminate attacks against civilians..." (Amnesty International AMR 23/01/94). However, instances where civilians are killed as a result of guerrilla actions against military or economic targets seem to be increasing.

The Colombian government maintains that 1,360 civilians were assassinated by the guerrillas between 1990 and 1994, including some government officials and elected political figures (*Cambio 16*, 14 March 1994). Hundreds of guerrilla members have also been killed in the past decades in internal purges and conflicts. In one recent case, 35 demobilized EPL guerrillas, who were members of the political party *Esperanza, Paz y Libertad* (Hope, Peace and Liberty; EPL), were massacred by a FARC unit in the department of Urabá in January, 1994.

According to government officials 2,400 civilians and military personnel were kidnapped by guerrilla units between 1990 and 1994 (*Cambio 16*, 14 March 1994). This represents about one half of the total as kidnapping by organized crime is also widespread. The number of guerrilla kidnapping has declined in the past year, possibly as a result of a weakening in their operational capacity. Ransom money is said to be one of the principle means of funding guerrilla operations. Kidnapping can also have political overtones. During the March, 1994, Congressional election campaign the FARC kidnapped five candidates and six mayors in an attempt to disrupt the process (*Comisión Andina de Juristas* 1994).

⁵⁷ Interview with Navarro Wolff, quoted in *NACLA Report on the Americas*, Vol XXVII, January/February 1994.

5.4.3 Paramilitary groups

There are an estimated 132 paramilitary groups in Colombia (*Cambio 16*, 3 October 1994). The groups have names like *Colombia sin Guerrillas* (Colombia Without Guerrillas; COLSINGUER), *Mano Negro* (Black Hand), *Escuadrón de la Muerte* (Squadron of Death) and *Muerte a Comunistas y Guerrilleros* (Death to Communists and Guerrillas; MACOGUE). The groups are supported by, and conduct operations on behalf of clandestine associations of the far right, landowners, *gremios* (business organizations) and the drug cartels. There is extensive evidence of close cooperation between paramilitary groups and the Colombian military and police.

The Andean Commission of Jurists estimates that the paramilitary groups were responsible for 18 percent of all human rights violations committed between January, 1993 and March, 1994, including extra-judicial killings, massacres, and causing disappearances (*Comisión Andina de Juristas* 1994: 1). One paramilitary leader, Fidel Castaño Gil, is known to have participated in, or to be the intellectual author of, at least 400 deaths in the past 12 years, including four massacres of peasants (*Cambio 16*, 3 October 1994). Human rights organizations believed that paramilitary activity was on the increase in 1994. Trade union officials reported that the groups have an operational capacity and sophistication, including the capacity to coordinate campaigns at the national level, that have never been seen before.⁵⁸

Paramilitary groups usually operate in zones under military control or zones of conflict. The target of abuses committed by the groups are civilians, including persons involved in social organizations and non-traditional political parties. The pattern of operations suggests that the objective of the paramilitaries "is to extinguish opposition" through intimidation or murder (UN doc. E/CN.4/1995/50/Add.1/ para.42). Some groups are involved in social cleaning operations in urban areas.

In regions where the groups operate, civilians are usually given the choice of participating in paramilitary activities, leaving the area or being killed. In the community of El Carmen, often considered a laboratory for the paramilitary model of counter-insurgency, over 300 persons were assassinated between 1990 and 1993 for alleged collaboration with guerrillas or refusing to participate in paramilitary activities. Another 4,200 persons, or one third of the total population, were displaced (*Justicia y Paz*, Vol.7, No.2 1994: 5-20). In another example, the mayor of Turbo, on the Atlantic coast, testified that paramilitaries disappeared 40 persons from that community alone during 1993 (*Cambio 16*, 3 October, 1994).

⁵⁸ Interview, *Central Unitaria de los Trabajadores de Colombia* (United Workers Central of Colombia; CUT), Bogotá, 7 October 1994.

Intimidation is also widespread. In September, 1994, three leaders of the petroleum sector union, Fedepetrol/USO, received a letter stating "we know that Fedepetrol is an organization of ELN delinquents ... [you] are the next to whom we will apply our justice as we have to other guerrillas camouflaged as unions. Soon you will be dead. This is the best gift we can give the country and society will thank us." The letter was signed by COLSINGUER, which has claimed responsibility for the assassination of at least five other union leaders.

Paramilitary groups were originally created by law 48 of 1968. Their activities were coordinated until 1989 by the highest levels of the government and the military command within the framework of an overall counter-insurgency strategy. By 1990 the UN Special Rapporteur on Summary or Arbitrary Executions found that more than 100 such groups were operating (UN doc. E/C.N.4/1990/22/Add.1). In 1989, then President Barco passed legislation banning paramilitary groups (Decreets 813, 814 and 815/89). On assuming office in 1990, former President Gaviria promised to "channel all the efforts of the Colombian state into disarming these groups..." (*Presidencia de la República* 1990) and President Samper has said he will "eradicate" the groups through a strategy which includes enforcing the original 1989 decrees. Both Gaviria and Samper denied any systematic government involvement with paramilitaries.

However, in contradiction to the government's official policy, evidence of "full complicity" between the military and paramilitary forces is "overwhelming" (*Asociación SETA* 1993: 14). According to the Andean Commission of Jurists, one type of paramilitary group is "made up of members of the armed forces who commit human rights violations under the protection of false identification. A second is made up of civilians who are armed by the military and act under its direction or tolerance" (*Comisión Andina de Juristas* 1994: 4).

The 1994 report of the UN Human Rights Committee reports 622 cases where military personnel were believed to be involved in paramilitary operations (UN doc. Supplement No.40 (A/47/40) p.84), and the UN Working Group on Enforced or Involuntary Disappearances documents information "which makes quite clear [the paramilitary's] connection with military and police commands and units" (UN doc. E/CN.4/1993/25 para.169). According to one human rights official in the Prosecutor General's office "it seems clear that a relationship [between the military and paramilitary] exists. However, you can appreciate how difficult this is to investigate. On numerous occasions we have been close to concluding a case when suddenly the evidence or the witnesses just disappear... Our investigators have been threatened and themselves subjected to abuses."⁵⁹

Military support is both passive, such as allowing paramilitaries free movement in military controlled areas and freedom from arrest, and active, including

⁵⁹ Interview, Office of the Prosecutor General, Bogotá, 12 October 1994.

planning joint strategy and operations and providing intelligence and resources. Officers with past relations to the paramilitaries, including the Commander of the Armed Forces, Major General Gil Bermudez, have been promoted to the highest levels of the military. Those who "collaborate with paramilitary groups tend to be more successful in counter-insurgency and are deemed more useful and thus promoted" (UN doc. E/CN.4/1995/50/Add.1 para.43).

5.4.4 *Drug traffickers*

Colombia is the world's largest producer of cocaine (*El Tiempo*, 12 October 1994), and possibly the second largest producer of heroin after Burma (*The Economist*, 24 December 1994). With an estimated 100,000 hectares in production, Colombia is also the second largest cultivator of coca leaves after Perú. Marijuana is grown and exported in smaller quantities.

The drug trade dominates the international community's perception of Colombia, often obscuring the broader situation of political violence. This perception is created, in part, by the government's claim that drug trafficking is the principle cause of violence in Colombia. However, national and international organizations report that the drug cartels were responsible for only 1.8 to four percent of the total number of reported human rights violations between 1991 and 1993 (*Asociación SETA* 1993: iv). A UN Special Rapporteur found that "the great majority of 36 judges and lawyers killed [in 1991] were not investigating the drug trade, but the activities of paramilitary groups and massacres attributed to the security forces" (UN doc. E/CN.4/Sub.2/1992/25 para.81).

Observers note that the government has political motivations for misrepresenting the true extent of the human rights violations committed by the cartels. However, the low statistics understate the enormous impact of the drug trade on Colombian society.

Historically, trafficking has been dominated by two cartels, based in the cities of Medellín and Cali. The Medellín cartel, led by Pablo Escobar, assumed an aggressive posture in its relationship to the state and attempted to gain political influence through force. It developed a military apparatus capable of waging open warfare against the government and its international allies. According to General Manuel Manza, then head of the *Departamento Administrativo de Seguridad* (Security Police; DAS) and more recently a candidate in the 1994 Presidential elections, "we realized that the drug traffickers no longer operated like ordinary criminals, like the mafia. They had become a state within a state ... and a political arm in the MORENA party in the Magdalena Medio region, a territory that the drug traffickers were on the point of totally controlling" (Maunel Manza as quoted by Pearce 1990: 3).

In creating the apparatus the Medellín cartel presented a threat that the government could not ignore. At the height of the conflict in 1990 3160 civilians and 250 police and judicial officials were killed in Medellín in fighting between the cartel and the government forces (Manitzas 1991: 14; Americas Watch 1992: 116). The Medellín cartel was effectively dismantled during the early 1990s and Pablo Escobar was killed was by government forces in December, 1993.

The cartel based in Cali thrived almost unmolested during the war between the Medellín cartel and the government. As a result, the United States Drug Enforcement Agency (DEA) estimated that the Cali cartel was responsible for up to 75 percent of cocaine exports to the US in 1994. In contrast to the Medellín cartel, drug traffickers based in Cali have thrived "by quietly cultivating political influence through corruption" and "using sophisticated business methods" (*The Economist*, 24 December 1994). The Cali cartel's strategy is to infiltrate rather than confront the Colombian establishment and, despite the real efforts of many Colombians, it is alleged to have penetrated the highest levels of Colombian political institutions, the security forces and private business (CINEP 1994b: 289-346). For example, in April, 1995, the Colombian Prosecutor General announced that he was opening investigations into allegations that President Samper received campaign contributions from the Cali cartel (*Cambio 16*, 27 June, 1995). Evidence has been made public which shows that the Cali cartel cooperated with government forces in their search for Pablo Escobar during 1993⁶⁰ and one the Special Representative to the UN Secretary General concluded that "depending on the region of the country, the drug traffickers are said to form alliances with the Government, the armed forces and the guerrillas to intimidate the local population" (UN doc. E/CN.4/1995/50/Add.1 para.45).

Drug traffickers are careful to camouflage their activities by reinvesting their profits in parallel legal business. For example, the cartel is thought to own one third of all agricultural land in Colombia and large numbers of peasants and indigenous persons have been displaced by their huge land acquisitions (*The Economist*, 24 December 1994). Money is also laundered through the construction sector, which grew by 12 percent in 1993. According to one analysts "it is certain that much of the construction which has improved [Colombia's] major cities has been the result of (drug) money laundering ventures" (CINEP 1994b: 319). In total, it is estimated that drugs accounted for up to 11 percent of the GNP during the 1980s (CINEP 1994b: 286), or 50 to 60 percent of export earnings in 1990 (Kalmanovitz 1990).

⁶⁰ The Cali and Medellín cartels were business rivals and there was a history of inter-cartel violence. With the demise of the Medellín cartel the Cali drug barons took over their production and distribution network and integrated markets formerly controlled by the Medellín cartel into their own system. Working with the government forces, therefore, was a business decision.

The drug trade, therefore, has a larger corrosive effect on the Colombian society than the violence it causes. Drug trafficking causes tremendous distortions in the economy resulting in the misallocation of resources and affecting everything from exchange rates, the balance of payments, land and housing prices and the tax system. Drug funded enterprises also undercut legitimate businesses, forcing a dependence in the overall economy on drug revenues.

The drug trade also has complex international dimensions which affect Colombia's diplomatic and economic relations with countries where drugs are consumed. In particular, the USD 50 billion "War on Drugs" has contributed to the general militarization of Colombia. Colombian military officials and the US embassy in Bogotá openly acknowledge that military aid intended for anti-drug operations is used in counter-insurgency operations (Manitzas 1991: 11; Americas Watch 1992: 116). The War on Drugs may have also caused some countries to mute their criticism of Colombia's human rights record. Amnesty International claims Colombia receives complicit support "from powerful international allies for whom Colombia's strategic and economic significance is of far more importance than its human rights record" (Amnesty International AMR 23/01/94: 3).

5.4.5 *Social organizations*

In a context of generalized economic growth in the 1960s and 1970s labour and peasant unions increased in number and importance. In particular, the *Asociación Nacional de Usuarios Campesinos* (National Association of Peasant Users; ANUC) became perhaps the most important national social organization. Created by the government as a mechanism for cooptation in 1967, it soon gained independence and became a combative movement which organized tens of thousands of peasants through marches, civic strikes and land invasions in an attempt to halt the expansion of cattle ranchers and commercial farmers and to preserve a peasant economy and demand the right to land (Pearce 1990: 93).

Throughout the country *Juntas de Acción Comunal* (Community Action Groups; JAC), play an important role at the local levels in providing the community with social services. These groups were originally created under the National Front as a means of social control. However, many of them became autonomous. The 1980s has also been a period of the growth of new social movements, such as women's groups, urban protest groups, organizations working for the internally displaced, and a large number of national and local human rights organizations. Social and popular movements no longer have the capacity for national mobilization due to decades of repression and the assassination of a large part of their leaders and membership. However, their presence is still of great importance at the local levels, where they are engaged in community work, such as building schools, roads and providing health services.

5.5 Civil and political human rights

Chapters 5.5 and 5.6 will consider empirical information on the human rights situation in Colombia. It will draw on the findings of various UN human rights bodies, the human rights agencies of the Colombian state and national and international non governmental organizations. The categories used to present the information are related to Colombia's main human rights obligations as found under national and international instruments.

Political participation

Despite constitutional guarantees, the real ability of persons outside of the two traditional parties to participate in the political process is severely limited by violence. Over 2,444 members of the Patriotic Union (UP) have been assassinated since the party was formed in 1985 (*Nuevo Siglo*, 10 July, 1994), including 17 persons between January and September of 1994. One of the most recent victims, Senator Manuel Cepeda, was killed by the paramilitary group, Death to Communists and Guerrillas (MACOQUE), in August, 1994. Cepeda is the fifth UP Congressperson or Senator assassinated and he was the party's last remaining representative in the Senate. UP officials presented a complaint of genocide to the Inter-American Commission for Human Rights in July, 1994, calling the killings "part of a systematic effort, on the part of the military, the government and others, to exterminate our democratic leaders" (*Comisión Andina de Juristas* 1994: 7).

Many social organizations and non-traditional political parties have been weakened by decades of repression and are unable to provide a counterbalance in political debate or policy making. Restrepo calls this "the systematic extermination of democratic leaders ... who are being annihilated in an atmosphere of impotent indifference on the part of the government" (Restrepo 1992: 282), a sentiment that is reaffirmed by most non governmental human rights organizations. Observers believed that the space for legitimate social action continued to shrink between 1990 and 1995.

Historically, voter abstention in elections is very high. Most Colombians appear to believe that they do not have access to the political system and their lack of confidence is manifested in their absence from the country's political life. Fifty-seven percent of Colombians stayed away from the polls in the 1990 Presidential which brought Cesar Gaviria to power. Sixty-six percent of Colombians abstained from voting in first round of the 1994 Presidential elections in May and 58 percent from the second round in June (*Cambio* 16, 30 May, 1994). The abstention rate in the March, 1994, Congressional and Senate elections was over 70 percent and 68 percent in the October, 1994, gubernatorial and municipal elections. Commenting on the high rate of abstention from the 1994 Presidential elections, the Special Representative of the UN Secretary-General for Internally Displaced Persons noted "... there appeared to be no real motivation to chose one party over the other".

Right to life

Article 11 of the constitution states that "the right to life is inviolable. There will be no death penalty". Articles 2 and 44 also establish the right to life as a fundamental human right and specify that it is the state's responsibility to protect that right.

The Intercongregational Committee for Justice and Peace reports that, of the 14,852 persons who were killed in politically motivated violence between 1990 and 1994, 8,174 persons were the victims of either politically motivated assassination or presumed political assassination (*Justicia y Paz*, Vol.7, No.2 1994: 21). The Andean Commission of Jurists reports approximately 3,600 politically motivated assassination between January, 1993 and March, 1994, or an average of seven persons a day (*Comisión Andina de Juristas* 1994). In the vast majority of the cases the persons responsible for the assassinations are alleged to be members of the armed forces, national police or paramilitary groups.

According to the Prosecutor General's 1994 annual report the groups most affected, in order of the number of recorded violations, are peasant farmers, small businesspersons, union members, members of non-traditional political parties and demobilized former guerrillas (*Procuraduría General de la Nación* 1994). The frequency with which extra-judicial killings were reported remained relatively constant throughout the Gaviria administration. In the first six months of 1991, 1,100 extra-judicial killings were reported to the Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions. The Special Rapporteur received information on 1,200 extra-judicial killings during the first six months of 1992 (UN doc. E/CN.4/1993/46 para.188), causing him to state in his 1994 report that "it is particularly disturbing to note that similar allegations have now come ... for many years" (UN doc. E/CN.4/1994/7 para.238).

Forced or involuntary disappearance

Article 12 of the constitution states that "no person shall be subjected to forced disappearance..." Officially, there have been over 2,000 unsolved disappearances since the first case was reported in 1978. Amnesty International reports that 1,500 disappearances occurred after the victim was known to have been detained by the Public Forces (Cited in *Caja de Herramientas*, August 1994: 1). The Prosecutor General received formal complaints against members of the public forces in 785 cases of forced disappearance between 1991 and 1993 (*Procuraduría General de la Nación* 1994: 10), and as of December, 1993, the UN Working Group on Enforced or Involuntary Disappearances reported it had transmitted information on a total of 895 cases to the Colombian government and had received no response on 700 of those cases (UN doc. E/CN.4/1994/26 p.46).

According to the UN Working Group on Enforced or Involuntary Disappearances "most of the disappearances occurred in areas under strict military control. Those

often reported to be responsible were the army, the police and paramilitary groups acting with impunity and believed to have links with members of the security forces" (UN doc. E/CN.4/1994/26 p.46). Noting that the instance of disappearances is not declining, the Working Group concludes "this would appear to be largely due to the phenomenon of impunity..." (UN doc. E/CN.4/1993/25 para.95). According to ASFADDES, "there are no cases where a person has been convicted..." for causing a disappearance,⁶¹ and in a recent speech the Public Minister confirmed that impunity in the case of disappearances is "100 percent" (*El Espectador*, 9 October 1994). ASFADDES also claims that the number of disappearances actually increased during the first months of the Samper administration.

Torture and ill treatment

Article 12 of the constitution states "no person shall be subjected to ... torture or cruel treatment or penalties". However, the UN Special Rapporteur on Torture calls the practice "endemic ... especially in zones of conflict" (UN doc. E/CN.4/1994/31 para.188) and an NGO report to the UN Commission on Human Rights claimed that "torture is a systematic practice" (UN doc. E/CN.4/Sub.2/1994/NGO/29 para.3e). The Prosecutor General's 1994 report records 635 formal complaints made against members of the Public Forces on allegations of torture between 1991 and 1993, noting a 23 percent increase in complaints during 1993 over the previous year (*Procuraduría General de la Nación* 1994: 9). The *Comisión Intercongregacional de Justicia y Paz* (Intercongregational Commission for Justice and Peace) reports 436 documented cases between 1990 and 1994, also noting an increase in the instance of torture in recent years (*Justicia y Paz*, Vol.7, No.2 1994: 21).

Human rights groups estimate that only a small percentage of cases are actually reported, a fact that the Prosecutor General acknowledges. Research done by human rights groups found that victims and their families are frequently threatened not to report their torture or are forced to sign disclaimers stating that they were well treated during their detention (*Justicia y Paz, Colectivo de Abogados José Alvear Restrepo*, and CREDHOS 1994).

Impunity for torture appears absolute. The Prosecutor General reports that eight percent of complaints made against members of the public forces in 1993 resulted in administrative sanctions (*Procuraduría General de la Nación* 1994: 31-33). There appears to have been few or no cases of penal sanctions administered through the military justice system.

⁶¹ Letter from the President of ASFADDES to President Gaviria, 29 June 1994.

Freedom of assembly and association

Freedom of association is probably one of the fundamental rights most seriously under attack in Colombia. The systematic repression of non-traditional political parties, social organizations and unions violates many rights guaranteed under national and international law. In this respect, it is useful to consider the situation of the Colombian labour movement. The constitution provides comprehensive rights to Colombian workers, including the right to form a union (Article 39), the right to enter into collective bargaining, the right to strike (limited in the case of essential services) and the right to participate in the management of companies (Articles 54-56). The state is charged with the responsibility of implementing these rights through the labour code based on the principles of equality and special protection for women and minors (Article 53).

Colombia remains one of the most dangerous countries in the world to be a trade unionist. Between January 1986 and October, 1994, 1,542 persons affiliated with the CUT have been assassinated, a full two percent of the federation's membership. That figure includes 178 assassinations in 1993. The ILO reports that 52 percent of all union members killed in the world during 1992 were Colombian. The CUT also estimates that a total of 4,000 of its members have been arrested under state of emergency public order laws.

Internally displaced persons

A 1994 study by the Catholic Bishops of Colombia found there were 586,261 internally displaced persons in Colombia. Almost the entire country is affected and 17 departments report being aware of 10,000 persons or more who have been displaced from within their borders. Most internally displaced persons are peasants, including indigenous persons. Almost 60 percent are female, an estimated 40,000 of whom were widowed in the violence just before having to flee. Seventy one percent were under the age of 25 (*Conferencia Episcopal de Colombia*, November-December 1994). In addition, there were an estimated 60,000 Colombian refugees living in Ecuador and Venezuela (US Committee for Refugees 1994: 158-159).

Internally displaced persons are forced to abandon their permanent homes because of violence resulting from armed conflict between the government and guerrilla forces, the operations of paramilitary groups or because their security is jeopardized by human rights abuses, threats and harassment. They do not cross international borders, and, therefore, do not have rights under the jurisdiction of the international refugee system. Colombia has a long history of forced internal displacement. During the Violence (1946-66) an estimated two million persons were forced to flee the countryside and move to urban areas or remote regions of the country.

Until recently, the Colombian government did not acknowledge the problem of displacement, in part "because [the government] perceived the problem as a

consequence of violence for which it had repeatedly denied responsibility" (UN doc. E/CN.4/1995/50/Add.1 para.74). As a result of the growing humanitarian crisis the Samper administration has acknowledged the problem and the Representative of the UN Secretary General reported he was encouraged by "modest and tentative" government initiatives (UN doc. E/CN.4/1995/50/Add.1 para.111). However, the administration has yet to present concrete proposals and the Special Representative notes that further initiatives and "a depolitization of the situation are required" (UN doc. E/CN.4/1995/50/Add.1 para.74).

5.6 Social and economic human rights

Garretón writes that democratic consolidation required "the definition of a new model of economic development ... that can point the way to the elimination of structural poverty" (Garretón 1995: 147). Economic, social and cultural rights are not considered in the minimalist procedural definition of democracy used in Chapter 1.3. However, they require independent consideration as the growing disparity between rich and poor in Colombia is an important source of social tension and one of the fundamental elements in the crisis of legitimacy suffered by the Colombian state. In addition, extensive economic, social and cultural rights are guaranteed by the Colombian Constitution of 1991 (Articles 42-82) and under various international conventions to which Colombia is a signatory.

The Colombian economy

The number of Colombians living in poverty has increased despite rapid economic growth in recent decades. The disparity between rich and poor is the primary cause of social conflict in Colombia, particularly where social organizations have resisted free market economic reforms. The result is an ironic situation of escalating political violence accompanied by economic prosperity. Most violence is concentrated in zones of prosperity, such as the oil producing departments, rather than in the poorest areas of Colombia. Commenting on this paradox, the President of one of Colombia's largest business associations noted "the economy goes well but the country goes badly" (Palacio and Rojas 1990: 71).

Since the early 1970s, Colombia has sustained the highest level of aggregate economic growth in Latin America, averaging three percent annually. The Colombian economy grew 5.3 percent (projected) in 1994, 5.1 percent in 1993, 3.5 percent in 1993 and 2.1 percent in 1992 (*Fedesarrollo* 1994, No.9), causing some, such as *The Economist* magazine, to refer to it as one of the new Latin American "tiger economies" (*The Economist* 24 December 1994). Colombia was not effected by the international debt crisis of the 1980s to the same extent as other Latin American countries and experienced growth rates of 3.6 to 5.3 percent while many other economies in the region actually shrank.

Colombia's gross national product (GNP) in 1993 was approximately USD 50

billion giving the country the fourth largest economy in Latin America. Colombia's USD 1,250 per capita income level is also one of the highest in Latin America. The foreign debt stood at USD 17 billion in 1992, or 37 percent of the GNP. Performance regarding debt as a percentage of GNP compared favourably to other important Latin American economies, such as Chile (48.9% of GNP), Mexico (34%), Argentina (30%) and Venezuela (61%). Servicing Colombia's debt consumed 36 percent of export earnings (World Bank, 1994: 206-207, Table 23). Inflation rates have remained relatively stable at 23 percent (projected) in 1994, 22.6 percent in 1993 and 25.7 percent in 1992, and anti-inflation policies have been an important element of overall economic planning (*Fedesarrollo*, No.9, 1994).

Colombian governments have traditionally followed a conservative economic strategy, often voluntarily implementing structural adjustment style policies that have been prescribed by international financial institutions, such as the IMF and the World Bank, elsewhere in Latin America. During the late 1980s then President Barco began a process of gradual economic liberalization. In 1990, President Gaviria accelerated and expanded the process of liberalization through his policy of *apertura económica* (economic opening), declaring that "internationalization" and the integration of Colombia into global markets were his primary economic objectives.

The right to an adequate standard of living and freedom from hunger

The Colombian government's *Departamento Administrativo Nacional de Estadísticas* (Department of National Statistics; DANE) estimated that 47.1 percent of Colombians lived below the poverty line in 1994, an increase from 40 percent in 1988 (DANE cited in *Caja de Herramientas*, August 1994: 16). The World Bank, the UNDP and UNICEF all estimate that 42 to 45 percent of Colombians live below the poverty line (*Consejo Gremial Nacional* 1994). DANE recently found that 33.6 percent of Colombians live in "critical poverty" and can not meet their basic nutritional needs. UNDP reports that poverty level reaches 70 percent in rural areas where 30 percent of Colombians live (UNDP 1994: 134, Table 3). An additional 15-20 percent of the population live just above the poverty line and could fall below it with a small change in their economic fortunes (DANE cited in *Caja de Herramientas*, August 1994: 16).

Income distribution is highly concentrated. Three percent of landowners control 70 percent of agricultural land (UN doc. E/CN:4/1995/50/Add.1 para.30). In 1991 the World Bank estimated the poorest 20 percent of the population earned 3.6 percent of Colombia's GNP. The UNDP's 1994 report found the poorest 40 percent earned only 12.7 percent of the national wealth in 1992. In contrast, the richest 20 percent earned 56 percent of the national wealth with the top 10 percent earning 40 percent (World Bank 1994).

Government expenditures grew from 11 to 16 percent of the GDP between 1990 and 1994. Correspondingly, in 1990 the Gaviria government promised that social expenditures would reach 22.5 percent of GDP by 1993 (UN doc. E.CN.4/1994/NGO/34 para.3d). However, social spending actual declined during this period, accounting for between eight and nine percent of total expenditures (DANE cited in *Caja de Herramientas*, August 1994: 16). As a result, Colombia's state expenditure of eight USD per capita is one of the lowest in Latin America (UN doc. E.CN.4/1994/NGO/34 para.4c). Spending on healthcare accounted for 1.7 percent of the GDP or about half of the UNDP's recommended level. UNICEF estimated that only 60 percent of Colombians had access to healthcare between 1988 and 1993 (UNICEF 1995: 71, Table 3). DANE found that 80 percent of persons living below the poverty line had no health insurance (DANE cited in *Caja de Herramientas*, August 1994: 16).

The right of everyone to work and the enjoyment of just and favourable working conditions

Article 25 of the constitution states "all persons have the right to a job in fair and dignified conditions". The World Bank estimates there are 20 million persons of working age in Colombia (World Bank 1994: 210, Table 25). Official unemployment in the formal sector fluctuated between 10 and 12 percent during the four years of the Gaviria administration, dipping to a low of 7.8 percent in December, 1993. These figures do not accurately reflect the situation in rural areas, the instance of under-employment, which effects 15.5 percent of formal sector workers, or involuntary partime or temporary work, which effects 18 percent of workers (*Fedesarrollo*, No.9, 1994).

DANE estimated that 52 percent of the Colombian workforce was employed in the informal sector in 1994 (DANE, cited in *Caja de Herramientas*, August 1994: 16). Informal sector work can include selling items in the street or piece work done in the home. Persons in the informal sector often are not included in official statistics and do not receive the same benefits or wages as workers in the formal sector, including the protection of labour legislation and social security. The minimum wage is set annually by government decree in consultation with business and unions. The 1994 minimum wage was 99,000 pesos a month, or approximately USD125. The minimum wage has been consistently established below the rate of inflation, losing seven percent of its real earning power over the four years of the Gaviria administration (*Fedesarrollo*, No.9, 1994). Unions walked out of negotiations to establish the 1994 wage to protest the decline in the real value of salaries.

In 1993 22 percent of workers in the formal sector earned below the minimum wage, and approximately sixty percent earned below two minimum wages which is considered near the poverty line requirement for a family of four. Figures for peasant farmers and persons in the informal sector were not available. However,

the instance of poverty is considerably higher in these sectors. Fifty percent of workers in the formal sector do not have social security benefits, such as health insurance or pension. Work also appears to be unstable. Twenty-five percent of employees in larger firms and 37 percent in micro-enterprises had been in their jobs less than one year in 1992 (*Fedesarrollo*, No.9, 1994).

The right to education

Articles 44, 64, 67, 68, 69 and 70 guarantee broad education rights, including universal education for children, religious education, bilingual education for indigenous groups and training for workers.

In 1993 expenditures on education were three percent of the GDP. The constitution provides for parallel public and private education. The UN Committee on Economic, Social and Cultural Rights points out that 60 percent of education occurs within the private system (UN doc. E/C.12/1991/SR.17 para.50). According to the Colombian representative to the committee, these are for-profit institutions and exist "because the Colombian state does not have the resources to provide free education to the entire population" (UN doc. E/C.12/1991/SR.18 paras.55-56). Effectively, therefore, Colombia has a two tiered system where the quality of education often depends on the ability of families to pay. The situation is particularly difficult for a "large portion of rural and indigenous [and black] children [who] have been economically marginalized and have limited or no access to adequate education..." (UN doc. CRC/C/15/Add.15 para.8).

Public system teachers report they are paid poorly and often are the target of threats and harassment. For example, the *Federación Colombiana de Educadores* (Colombian Federation of Teachers; FECODE) reports 47 teachers were assassinated between 1991 and 1992, and more than 400 others received death threats (UN doc. E/CN.4/1992/30 para.109). Education in zones of conflict is often interrupted by violence, and human rights workers report that it is not uncommon to find children who have little or no education, particularly among children who are internally displaced.

These statistics provide an overview of the economic situation and some of the most important economic, social and cultural rights. As reported to the UN Commission on Human Rights, they "tend to prove that poverty is constantly increasing despite improved macroeconomic indices ... and show that the social situation is steadily deteriorating as the disparities in the redistribution of income are increasing" (UN doc. E.CN.4/1994/NGO/34 para.6d).

6. Pacts of autonomy and pacts of impunity

Chapter 6 will consider the mechanisms which allow the paradox of democracy and systematic human rights violations to exist. The period under review in Chapter 6 will be 1970 to December, 1994, encompassing the "Dirty War" to the first months of the Presidency of Ernesto Samper Pizano. During this period interests mutually held by the civilian elite and the military establishment were increasingly under threat from growing opposition in civil society. As a result, maintaining the political system has required two new civilian elite-Public Forces pacts: (i) a *pact of autonomy* for the military which allows them to pursue commonly held civilian elite-Public Forces interests; and (ii) a *pact of impunity* which allows the Public Forces to avoid accountability for their role in systematic human rights violations.

As noted in Chapter 1.5, the two new pacts are fundamentally anti-democratic and reinforce the anti-democratic aspects of the original National Front elite pact. They are political agreements between the civilian elites and the establishment of the Public Forces. The institutional mechanisms which gave the two pacts force are entrenched in: (i) the Colombian Constitutions of 1886 and 1991; (ii) state of emergency powers; (iii) reforms to the Colombian legal system which make state of emergency decrees related to internal security a permanent part of ordinary law and, therefore, extend emergency powers to periods of normal constitutional governance; and (iv) the military justice system. This study argues that the pacts effectively neutralize the democratic characteristics of the Colombian polity. As a result, "force has become a fundamental part of the political order" (Restrepo 1992: 287).

Comparisons can be drawn between the use of formal constitutional and legal mechanisms in Colombia and elsewhere in Latin America. Entrenching the power of former authoritarian actors in the constitutional and legal framework of the post-transition polity compromises the ability of new civilian governments to consolidate democratic governance. "New democratic governments, therefore, must seek to eliminate (or at least contain) authoritarian enclaves on the one hand, while initiating the process of consolidation on the other" (Garretón 1995: 147).

6.1 Pacts of autonomy

To explain the origins, rationale and implications of the elite pact of autonomy between the civilian government and the Colombian Public Forces both national

and international factors must be considered.

The national context.

Nationally, the analytical and empirical framework in previous chapters has established the dual nature of Colombian democracy. Chapter 5 demonstrated that Colombia has a formal liberal democracy and one of the most advanced systems for the protection and promotion of human rights in Latin America. At the same time, Chapter 5 presented empirical evidence to demonstrate that the Colombian state, through its Public Forces, is the main actor responsible for the political violence and human rights violations. The roots of the paradox lie in the Colombian state's crisis of legitimacy, the institutionalization of the historical constants outlined in Chapters 2 and 3 through the National Front elite pact and the extension of those constants into the contemporary polity. Chapters 1.5, 2.7 and 3 also argued that the military is the subordinate partner in a civilian elite-Public Forces alliance designed to maintain the political system in the face of growing new challengers' opposition. While military autonomy continues to grow the subordinate dynamic of that relationship continued into the 1990s.

To complete this information, this study will briefly review the overall strategy employed by the civilian government and the Public Forces to contain new challengers and maintain the political system. The levels of political violence in Colombia have remained relatively constant since 1958, causing some Colombian historians to question if the Violence really ended or simply moved into a new phase (Sánchez 1992: 114). However, what has changed is the strategic framework, or model of repression, used by the civilian elite-Public Forces alliance to maintain the political system. Changes in the model have been conditioned by: (i) the evolution of new challengers; and (ii) the ideological development of the definition of "internal security" employed by the military. It is necessary to briefly consider the changes in this strategy as they provide the context for both the pacts of autonomy and impunity.

Since 1958, successive Colombian governments have perceived legitimate social protest arising from the crisis of the state as a threat to the state itself. They responded with a combination of armed force and legal repression through state of emergency powers:

(i) In the 1970s, civilian governments relied on legal measures to control social protest, repeatedly invoking state of emergency rule. Extraordinary powers were used extensively to detain political activists, and 60,325 political prisoners were reported between 1970 and 1979. These persons predominantly belonged to legal trade unions, opposition political parties, human rights organizations, social workers, peasant and indigenous organizations (UN doc. E/CN.4/1995/111 para.25). Torture was reported to accompany detention (LIDERLIP 1990: 16).

(ii) By the 1980s, the use of extraordinary legal mechanisms appeared to be insufficient to control opposition. Colombia moved into a period known as the "dirty war". According to the Representative of the UN Secretary-General for Internally Displaced Persons, "the dirty war denotes the selective extermination of left-wing political activists, such as members of the (Patriotic Union), trade unionists, members of popular and human rights organizations, teachers etc." (UN doc. E/CN.4/1995/50/Add.1 para.25.). Legal repression through extraordinary powers continued. However, it was combined with the use of armed force, including the creation of paramilitary groups. The shift in strategy is reflected in statistics from the period. While the number of political prisoners during the 1980s declined to 21,000, the instance of extra-judicial killings increased from 1,053 in the 1970s to almost 13,000 between 1980 and 1989 (LIDERLIP 1990: 16).

(iii) In October, 1994, the Representative of the UN Secretary-General found that "...the dirty war has not yet subsided" (UN doc. E/CN.4/1995/50/Add.1 para.25). Human rights violations committed by agents of the state occurred in the context of a "total war" or "integrated war" strategy. Total war is designed to bring the full legal, political, economic, rhetorical and military weight of the state to bear against the states legal and armed opponents. It combines repression (through force or legal means) with economic measures and incentives, propaganda and an international campaign. The victims of abuses are still politically unaffiliated persons living in zones of conflict or members of legal organizations critical of the government. By circumstances of where they live, or by their participation in legitimate political activity, victims become "part of the enemy". The Prosecutor General refers to this form of counter-insurgency as "removing the water from the fish" (*Procuraduría General de la Nación* 1994: 47).

The international context

This study does not consider that the security doctrines adopted by the Colombian military were externally imposed by the United States or any other outside power. In many respects, Colombia has often maintained its independence from the US, particularly in security matters related to the drug trade. However, international tensions arising from the Cold War and the consequent implementation of the Doctrine of National Security in Latin America played an important role in the ideological development of Colombia's own internal security policy (Blair Trujillo 1993: 90-97).

Since World War II, Colombian foreign policy has been characterized by a close relationship to the United States. In 1951 Colombia was the only Latin American country to send troops to support the United States in the Korean war. In this way Colombia showed its willingness to "defend the strategic interests as well as the values of Western democracy" (Sánchez 1992: 88). The military relationship between Colombia and the United States was formalized by Colombia's adherence to various bilateral and regional treaties and security arrangements which bound

the nations of Latin America to a collective security arrangement against "communist" intervention (Loveman and Davies 1989: 163).

Colombia was among the first countries to join in a hemispheric security framework designed by the United States, including the *Tratado Interamericano de Asistencia Recíproca* (Interamerican Treaty of Reciprocal Assistance; TIAR), the so-called Río Pact of 1945. In 1952 Colombia and the United States signed the *Pacto de Asistencia Militar* (Military Assistance Agreement; PAM) and Colombia becomes the site of the first Latin American counter-insurgency training school (Pearce 1990: 63). Through a series of US sponsored Inter-American conferences *Conferencias de Ejércitos Americanos* (Conferences for American Armies; CEM) a common anti-Communist ideology among Latin American armed forces was developed and consolidated in the aftermath of the Cuban Revolution (Pearce 1990: 63).

In the 1950s the Colombian military also started to receive arms from the United States for use in its war against internal subversion (Blair Trujillo 1993: 91),⁶² and a growing number of officers were being trained by the US itself.⁶³ During the 1970s and the 1980s Colombia was the second largest recipient of US military

⁶² Between 1961 and 1967, Colombia received USD 60 million from the US in military assistance for counter-insurgency and "economic development", all administered by the army, and a further USD 100 million in military equipment (Pearce 1990: 63).

⁶³ Between 1950 and 1963 an annual average of 250 Colombian militaries were trained in US military schools. Between 1964 and 1970 the average number increased to more than 300 per year (Leal Buitrago 1989: 251). In the *Escuela de las Américas* (School of the Americas) in Panamá, the United States were responsible for the training of 45,331 Latin American military officials between 1946 and 1984. Colombia ranks second in Latin America in having military personnel trained in that school, 4,593 until 1984, 100 less than Somoza's Nicaragua (Reyes Echandía, "Legislación y Seguridad Nacional en América Latina", *Revista Cemla*, del Centro de Estudios Militares de América Latina, No. 2, December 1985, cited in Ruiz 1993: 15). Between 1987 and 1990, in Fort Benning, Georgia (US), 2,031 Colombian militaries were trained in counter-insurgency strategies, placing Colombia as the Latin American country with the highest number of militaries trained in that school (Department of the Army, United States Army School of the Americas, Fort Benning, Georgia, Student Projections 1987-1990, cited in Ruiz 1993: 16).

In 1963, US Defense Secretary Robert McNamara explained to a House Appropriations Committee: Probably the greatest return on our military-assistance investment comes from the training of selected officers and key specialists at our military schools and training centers in the United States and overseas. These students are hand-picked by their countries to become instructors when they return home. *They are the coming leaders*, the men who will have the know-how and impart it to their forces. I need not dwell upon the value of having in positions of leadership men who have firsthand knowledge of how Americans do things and how they think. *It is beyond price to us to make friends of such men.* (Emphasis added). (US House of Representatives, Committee on Appropriations, Foreign Operations Appropriations for 1963, Hearings, 87th Cong., 2nd sess., Part I, p. 359, quoted in Lernoux 1991: 163-164).

aid in Latin America (Bustamante 1989: 18), and the high levels of assistance have continued in the 1990s as a result of the war on drugs. Therefore, the professionalization of the Colombian military was largely subsidized by the US. This allowed Colombia to "carry out [military] professionalization without experiencing debilitating conflict between the military and the government over the allocation of economic resources" as occurred in many other Latin American countries (Bustamante 1989: 18).

High levels of military assistance, interaction with Latin American dictatorships through common security arrangements and domestic events made the Colombian military "highly receptive" to the dominant ideology of the period related to internal and collective security; the National Security Doctrine. The National Security Doctrine became the explicit manifestation of the anti-Communist ideology, and counter-insurgency warfare became the Latin American expression of the Cold War. The National Security Doctrine was first developed in Brazil at the *Escola Superior de Guerra* (Superior War College; ESG) and gained force domestically and through the US redefinition of the concept of security.⁶⁴

By 1976 Brazil, Argentina, Bolivia, Chile, Ecuador, Perú and Uruguay had installed National Security military regimes. In contrast, Colombia maintained civilian rule. However, both civilian and military elites adopted the National Security Doctrine and the US designed counter-insurgency strategy to combat internal subversion (Leal Buitrago 1989: 249-256). As one minister, Rafael Hernández, expressed in a speech to the Armed Forces: "the principle enemy of Colombia and the armed forces is the internal enemy, dominated by a foreign imposed Marxist ideology, which threatens the existence of Western Civilization" (*Revista Fuerzas Armadas* No.6, 1961, p.621, cited in Blair Trujillo 1993: 95).

It is misleading, therefore, to argue that the US imposed a given security ideology on Colombia. While the external actors influence the ideological reorientation of Colombian security policy, the National Security Doctrine found fertile ground in military institutions and Colombian civilian elites who were threatened by growing social discontent (Blair Trujillo 1993: 116). The results of the doctrine are seen

⁶⁴ The National Security Doctrine is based on the idea that the enemy of national sovereignty was no longer an external enemy, but an enemy within the nation. The internal enemy was groups or persons who attempt to change the dominant structure of power. Military intervention was, therefore, considered necessary to guarantee the survival of the values of Western Christian democracy (Reyes Echandía 1991: 145). To defend Christian values it is necessary to sustain "a permanent war that is fought on all levels; economic, military, political, and psychological ..." According to the doctrine "the most dangerous expression of the new strategy of international communism is the revolutionary war. When confronted by communist penetration, [that] represents the destruction of the basic moral foundations from which the Western and Christian civilization derive ... society is under the obligation of drastic self-defense" (Blair Trujillo 1993: 111-112).

in the implementation of Dirty War tactics in the 1970s and 1980s. One reason for continued civilian rule and military subordination to civilian power was the fact that both elite groups had a similar perspective. A coup, therefore, was unnecessary and a large part of the military establishment held to the historical principle of non interference in political matters (Blair Trujillo 1993: 181).

6.1.1 Mechanisms for military autonomy

In the years following the National Front agreement, the military gradually assumed public and internal security functions in a series of incremental steps (Bustamante 1989: 20).⁶⁵ Consequently, what were formerly political issues under civilian authority increasingly became defined as military problems which required a military solution. According to Marc Chernic "the formal arrangement of elite cooperation developed through the National Front accords, the methods of incorporation of middle and popular sectors, as well as the systematic practice of marginalizing and repressing alternative forms of political organization resemble the patterns of dominance found in certain authoritarian regimes." (Quoted in WOLA 1989: 15).

The military was given growing autonomy to restore "public order", which led to a progressive militarization of the structures of Colombia's democratic institutions (WOLA 1989: 15-16):

- (i) the central government appointed military officer to gubernatorial or mayoral in regions of conflict;
- (ii) regional civilian authorities were instructed to consult with military commanders on all internal security and public order issues. This led to the militarization of local government and public administration;
- (iii) the virtually permanent state of siege described in this chapter further gave the military the means to impose their views with increasing frequency over local civilian government;

⁶⁵ Colombian journalist and historian Arturo Alape describes the evolving relationship between the civilian governments and the military during the 1960s and 1970s as follows: "It is evident, that during these presidential periods, violence of a political character has deepened, becoming an element of strong influence in daily life. All types of activities are contaminated, in a tense atmosphere where violence breathes in its distinct manifestations. This element has created a dependency - in some instances more profound than others - between the government and the armed forces. It could be said that this relationship is like an umbilical cord, necessary and definitive to sustain and defend the stability of the institutions." (Alape 1985: 353).

(iv) in jurisdictional conflicts the central government almost invariably supported the armed forces;

(v) the military's influence over the administration of justice grew as a result of a jurisdiction expansion of the areas governed by military law;

(vi) the military also acquired a significant measure of control over education, by establishing so-called military academies which were secondary schools modeled after Colombian military schools and under the direction of the Defense Ministry (Bustamante 1989: 21-22).

These measures reflect the deepening of the military's presence in Colombian society and politics beyond simple matters of public safety. According to one human rights observer "the military's structure is more coherent than the government's and they probably have a better idea of what is going on in the country than any politician".⁶⁶ However, they were undertaken at the initiative of civilian politicians as a matter of policy rather than under the threat of military intervention. Consequently, the militarization of the structures of government did not appear as an erosion of the national government's authority. In spite of their greater autonomy, the military remained subordinate to the political order established by the Liberal and Conservative parties (Bustamante 1989: 21).

6.1.2 *State of emergency*

Since April 9, 1948 every Colombian president has resorted to emergency powers to deal with actual or perceived crisis during his administration. Consequently Colombia has been governed almost uninterruptedly since 1948 under a state of emergency. This authority derived from the Article 121 of the 1886 Constitution, which provided that in case of war or internal commotion, the President could declare a state of siege, suspend laws deemed "incompatible" with the situation, and issue decree laws to deal with the crisis. Article 121 and its subsequent amendments provided for very limited checks on the exercise of emergency powers. The president needed only to declare a state of siege and obtain the written consent of each minister before the declaration could go into effect (Lawyers Committee for Human Rights 1994: Note 14).

Under the continually renewed states of siege since the creation of the National Front, the military acquired criminal jurisdiction over crimes of subversion. The National Police were incorporated into the Armed Forces under the control of the Minister of Defense, leaving Colombia without any security force responsible to

⁶⁶ Interview, *Plan Nacional de Rehabilitación* (National Plan for Rehabilitation; PNR), Bogotá, 4 October, 1994.

civilian authority. Military power reached its zenith during the Turbay administration (1978-1982) with the *Security Statute* (decree 1923 of 1978) which expanded military authority and severely restricted civil and political rights. Americas Watch in a 1982 report concluded that "when President Betancur (1982-86) began his administration two Colombias existed side by side: a functioning democracy and a militarized society in which human rights are grossly abused" (Americas Watch 1982: 3).

The last period of emergency rule under the Constitution of 1886 (1984-91) ended with the ratification of a new constitution on July 9, 1991. However, the initial normal constitutional government was short lived. President Gaviria declared a State of Internal Upheaval on July 12, 1992, and on four subsequent occasions during his administration. President Samper has refrained from declaring an emergency during his first months in office. However, public order laws passed by the Gaviria administration remain in effect.

State of emergency provisions are, in effect, Colombia's second or hidden constitution. The habitual use of emergency powers on the part of successive Colombian governments demonstrates a lack of will to respect democratic process and pursue policy related to security and public order within the norms defined by the country's constitution. This creates a situation of "civil dictatorship" which has become "the principle mechanism for neutralizing the human rights (guarantees) established in the constitution" (Gustavo Gallon as quoted in *Justicia y Paz*, Vol.6, No.2 1993, p.7).

Chapter 6 of the 1991 Constitution provides for government under *Estado de Excepción* (state of emergency). The articles distinguish between *Estado de Guerra Exterior* (Article 212, State of External War) and *Estado de Conmoción Interior* (Article 213, Internal Upheaval). The President may declare a State of Internal Upheaval for an initial period of 90 days, with the possibility of renewal for two successive 90 day periods subject to approval of the Senate. Articles 213-215 grant the President sweeping powers to legislate by decree and "suspend laws incompatible with the State of Internal Upheaval". These decrees can remain in effect for 90 days after the emergency is lifted (Article 213), providing for a maximum period of emergency rule of 360 days. However, there is nothing in the constitution which prevents a government from declaring a new State of Internal Upheaval one day after an old declaration has lapsed. Under the old constitution emergencies could be declared for an indefinite period (Article 121, 1886 Constitution).

Former President Gaviria declared a State of Internal Upheaval on the following occasions:

On July 12, 1992, a State of Internal Upheaval was declared to prevent the release of 1,200 persons charged under terrorism laws. The majority of these persons were

not associated with a guerrilla or drug organization, but were members of legal political and social opposition groups. In this case, emergency rule was used to suspend the right of *Habeas Corpus* as guaranteed by Article 30 of the 1991 Constitution.

On November 8, 1992, following formal breakdown of peace negotiations between the government and the FARC and ELN on October 31. The imposition of emergency rule was accompanied by a Presidential declaration of *Guerra Total* (total war) or *Guerra Integral* (integrated war) against the guerrillas and drug traffickers. Gaviria introduced at least 40 new public order or "anti-terrorist" decrees. In particular, legal organizations suspected of aiding the guerrillas were targeted for investigation and legal sanctions.

The November, 1992, emergency declaration was renewed by the Senate, on the request of the President, for the maximum two additional terms and expired in August, 1993. State of emergency decrees remained in effect for a further 90 days.

In May, 1994 a State of Internal Upheaval was again declared to prevent the release of hundreds of prisoners detained under public order laws. The declaration was struck down as unconstitutional by the Supreme Court which found that emergency powers could not be used to compensate for inefficiencies in the judicial system.

The 1991 Constitution specifies that a State of Internal Upheaval may only be declared in the event of "grave disturbance which poses an immediate threat to the institutional stability or security of the state, together with the citizens, that can not be resolved through the ordinary powers of the police" (Article 213). However, there is a consensus among human rights observers, in Colombia and the international community, that the situation has not warranted the use of emergency powers as described by the constitution. For example, the Interamerican Commission for Human Rights of the OAS reported that Gaviria's use of emergency powers was "of concern ... both in terms of their legal justification and the restrictions created on fundamental rights". This is particularly the case in the use of the declaration of a State of Internal Upheaval to avoid the release of persons held under anti-terrorism laws. "It does not appear that gaining a legal advantage against the accused [persons] constitutes a grave disturbance of public order" (CIDH 1993: 56-58). According to the human rights organization, the José Alvear Restrepo Lawyer's Collective, "in our judgement, the grave circumstances required by the constitution (for a declaration of Internal Upheaval) do not exist" (*Corporación Colectivo de Abogados* 1994: 4).

State of emergencies provisions often appear to contradict human rights guarantees provided in the constitution and under international agreement. The message to civil society is that the state is unprepared to live within its own rules. Also, while the emphasis of legal reform has targeted groups which challenge the state, the

justice system seems unable to reduce rampant common crime.

6.1.3 *Making the state of emergency permanent*

The President has the option of presenting decrees made under a state of emergency to Congress for consideration as legislation. If approved, the decrees become part of ordinary law. The effect is to make aspects the a state of emergency permanent even during periods of normal constitutional government. According to the People's Defender, Dr. Jaime Córdoba Triviño, "this is nothing less than prolonging by subterfuge the state of legal abnormality" (Cordoba Triviño as quoted in Amnesty International AMR 23/01/94: 32).

The majority of the State of Internal Upheaval decrees enacted during the Gaviria administration have been approved as legislation and are part of the ordinary judicial system. Between 1965 and 1987 persons accused of political crimes were tried under the military justice system. This practice was declared unconstitutional by the Supreme Court in 1987 and is forbidden in the 1991 Constitution. Then President Barco responded with a series of exceptional public order and anti-terrorist measures made under the 1984-91 State of Emergency. The decrees lapsed when the emergency was lifted in 1991. However, they subsequently became the basis of the Gaviria administration's *Nuevo Código de Procedimiento Penal* (Code of Criminal Procedures), which was passed as legislation in November, 1991, and is now part of ordinary law. The Code was expanded throughout Gaviria's term in office, notably when many emergency decrees made after the declaration of "total war" in November, 1992, became law in 1993.

The stated intention of Barco's original decrees and Gaviria's Code of Criminal Procedure was to strengthen the institutional capacity of the Colombian judicial system to respond to political violence, increase the conviction rate of "terrorist and narco-terrorist" offenses and protect members of the judiciary from reprisals. Extraordinary measures are not unwarranted given the frequent attacks made against police and judicial officials, including assassinations, by the drug cartels in the late 1980s. However, the code institutionalizes some of the worst aspects of emergency laws issued under prior successive states of siege and has a much broader application. It "impinges on basic due process rights guaranteed under the Colombian Constitution", undermines the authority of the Colombian judiciary to safeguard basic human rights and preserve the rule of law" and "creates norms and procedures that violate fundamental rights established in the Political Constitution of Colombia..." (CIDH 1993: 65).

One of the cornerstones of the new penal code are *tribunales regionales* (public order courts) which are mandated to try "terrorist and narco-terrorist" offenses. Under court procedures the identity of the judge (*juéz sin rostro*) and the prosecutor are secret. The identity of witnesses is secret and the possibility of

meaningful cross-examination by the defense is extremely limited. Evidence is also secret and can not be challenged in court or reviewed by the defense. Defendants can be held for extended periods without trial which may result in their effectively serving a prison term without actually being convicted. Defense counsel is unable to challenge the Prosecutor's decision to imprison the accused and members of the armed forces may investigate cases and gather evidence. This is in violation of Article 213 of the constitution but formalizes the practice in many parts of Colombia where the military is the strongest government presence.

Rather than prosecuting drug traffickers or guerrillas, the public order courts are used to repress civil organizations. During 1993 the National Penal System recorded a total of 30,000 detention. More than 10,000 of these were persons accused of offenses under the public order system (*Comisión Andina de Juristas* 1994). It is estimated that only six percent of the persons prosecuted in recent years were drug dealers or members of a guerrilla organization. The remaining 94 percent had no political affiliation or were identified with legal organizations and prosecuted on the basis of their participation in open and legal activities, such as a union strike. Unions, peasant organizations and political parties are common targets (Lawyers Committee for Human Rights 1994: 21).

Human rights groups refer to this form of political intolerance as a "criminalization of social protest" or "judicialization of internal conflict" which constitutes "no less than a dismantling of the rule of law". A study by the Andean Commission of Jurists conducted during 1993-94 found that "the grand majority of detainees should not be under the jurisdiction of a secret judge" as the charges against them can not be substantiated or did not constitute a terrorism offense (*Comisión Andina de Juristas* 1994).

The procedures and use of the public order courts constitute a significant politicization of the justice system which easily lends itself to abuse. According to Amnesty International "terrorism" can now mean "anyone who is opposed to the government" (Amnesty International AMR 23/01/94: 32). The Andean Commission of Jurists concludes the courts "are simply a means of exercising a form of legal repression against sectors of society, who, for their inconformity, are considered enemies of the established order" (*Comisión Andina de Juristas* 1994). The US based Lawyers Committee for Human Rights called the system "cynical" reflecting the "State's desire to repress political opposition and social protest on the pretext of combatting terrorism and narcotics trafficking" (Lawyers Committee for Human Rights 1994: 21).

Human rights organizations point out other problems. The armed forces can effectively capture who they want without respect for normal judicial process or constitutionally guaranteed rights. Decree 1820 of 1992 give the military the powers of the judicial police, even though Art 213 of the constitution specifically states that civilians may not be investigated or judged by the military. Persons are

detained on the basis of falsified evidence or unsubstantiated and unsigned "intelligence" reports. This often occurs to cover for an illegal arrest. Evidence is frequently given by questionable witnesses, such as paid informants, persons alleged to be members of paramilitary groups which are cooperating with the military or cases of personal revenge. The defense has no means of establishing the motive of the witness.

6.2 Pacts of impunity

Impunity in Colombia is almost absolute. The rate of impunity in alleged cases of human rights violations is estimated to be between 97 and 99 percent.⁶⁷ There are, therefore, almost no cases where judicial sanctions have been applied to deter agents of the state from committing human rights violations. The high instance of impunity has been extensively documented over decades by reputable national and international organizations, various Rapporteurs within the UN Human rights system and by the government's own human rights agencies (UN doc. E/CN.4/1995/111 para. 77, 92; *Comisión Andina de Juristas* 1994: 2). The problem was also recently acknowledged at the level of the state by both Presidents Gaviria and Samper.⁶⁸

Previous chapters have argued that the polity established by the 1958 National Front and the civilian elite-Public Forces alliance has resulted in gross and systematic human rights violations. Such violations seem unlikely in a situation of democratic governance built on the defining elements of democracy presented in Chapter 1.3. Specifically, under the principles of the rule of law and accountability agents of the state responsible for such violations should be sanctioned and, therefore, deterred by the judicial system from committing future violations. Gross and systematic human rights violations which occur as the consequence of state policy, and on the scale which exists in Colombia, are most likely to be committed where agents of the state are shielded from the legal consequences of their actions; a situation of impunity.

Based on the empirical evidence presented in previous chapters it can be implied that there is a tacit agreement between dominant elements of the Colombian civilian elites and the military establishment which allows impunity to exist as part

⁶⁷ This figure is based on recent reports of the Colombian Prosecutor General and various Colombian human rights organizations (*Comisión Andina de Juristas* 1994: 1-3).

⁶⁸ In his inaugural speech President Samper stated "our policy of peace will only be successful when we have improved the administration of justice and won the battle against impunity. Impunity is a major cause of violence ... when agents of the state violate the law they will be punished" (Ernesto Samper Pizano, *El tiempo de la gente*, Bogotá, August, 1994).

of implementing a larger internal security policy (LIDERLIP 1991: 25-55).⁶⁹ Such a conclusion is supported by the findings of numerous human rights bodies, official and non governmental, who allege that impunity occurs primarily as a result of the lack of political will on the part of the civilian government to prosecute agents of the state alleged to have committed violations (*Comisión Andina de Juristas* 1994: 1-4). For example, the UN Special Rapporteur on Torture commented "it does not appear that the government has taken serious measures or shown the political will to end impunity ... [the government has] no excuse for allowing human rights violations nor their perpetuation through impunity" (UN doc. E/CN.4/1994/111 para.106). Americas Watch further reported that "impunity is a result of the lack of political will on the part of the Colombian government to end political violence and ... [it] continues to threaten the Colombians despite the new instruments in the Constitution of 1991 which protect and promote human rights" (Americas Watch 1992: 142).

6.2.1 *The military justice system*

The legal mechanisms which allow impunity to occur are found within the framework of the Colombian justice system. Under Article 221 of the Constitution of 1991 all crimes or disciplinary infractions committed by members of the Public Forces "while in active service" are tried under the *fuero militar* (military justice system). Under this definition, human rights violations are considered an "act of service" and fall under the jurisdiction of the military courts. In turn, the military system has become the principle mechanism for permitting impunity (UN doc. E.CN.4/1995/111 para.87-107). The Prosecutor General recently informed the UN Rapporteur on Torture that "the military justice system has shown itself entirely ineffective in trying and convicting members of the State Defense and Security bodies responsible for ... violations (UN doc. E.CN.4/1995/111 para. 92) and in a letter to the Colombian Senate the Prosecutor confirmed that impunity within the military system was "100 percent".

Human rights organizations point to the many inconsistencies within the military system which lend themselves to abuse:

(i) The judge of first instance is the commanding officer of the accused (*Título II, Segundo Libro del Código Penal Militar*). Within the military hierarchy this officer is also responsible for the conduct of the accused and, in fact, may be the person who gave the order for the abuse to be committed. The military system

⁶⁹ This statement must be qualified by acknowledging that there are important groups within the state apparatus who actively oppose impunity, including persons who hold elected position and agents of the state. This study acknowledges the real actions and commitment of these persons. However, attempts to end impunity have been consistently blocked by an alliance between more powerful civilian and military elite factions.

also functions under the principle of due obedience which compels soldiers to carry out all orders under threat of disciplinary action (Article 217 of the Constitution of 1991). The trial judge, therefore, may be both judge and defendant at the same time and there is no separation of the justice system from the military's operational chain of command;

(ii) Trials are effectively closed to civilian oversight or participation, including intervention from other government agencies such as the Prosecutor General or the People's Defender;

(iii) There are no clear definitions of military crimes related to human rights violations;

(iv) There are extreme limitations placed on the military judicial process which effect both military and non military investigations. These limitations may be practical in nature owing to the isolation of many regions where violations occur. However, the Prosecutor General, in a report to the European Community and many other observers conclude that the current system also encourages an "esprit de corps" which protects military officials from any serious judicial penalties for their actions. "This protection is effective in almost all cases because of the *fuero militar*" (Asociación SETA 1993). The Prosecutor General also reports that "evidence is frequently concealed [by the military] or attempts are made to divert investigations". Once a decision has been made by the military courts, "which frequently hurry to try a case and hand down a favourable decision", the accused "enjoys the principle of *res juridica* and a new review of the case can not be made" (UN doc. E/CN.4/1995/111 paras. 98-99);

(v) Finally, "fear of further violence prevents victims and witnesses from taking legal action" (E/CN.4/1995/111 para.78). Human rights organizations claim that witnesses and the families of human rights victims are commonly intimidated by the military, including being subjected to human rights violations themselves, to ensure that they do not take legal action.⁷⁰

There is no question of the actual efficiency of the military justice system. Offenses related to disciplinary infractions are punished quickly and severely. Between January, 1992, and May, 1994, military courts made decisions in a total of 4304 cases of which 4103 decisions related to disciplinary offenses (*El Espectador*, 9 October 1994). However, the Colombian Public Ministry reports that, between January, 1992 and May, 1994, 90 percent of the cases in which military judicial proceedings were halted, or where the accused was absolved, related to crimes committed by members of the public forces against civilians. The Colombian Supreme Court has criticized the systematic use of the "lack of

⁷⁰ Interview, *Justicia y Paz*, Bogotá, September 1993.

definitive proof" as a rationale to dismiss military judicial proceedings (*Asociación SETA* 1993: 59). Taken in the context of the existence of extensive legal mechanisms to protect human rights, the empirical evidence further suggests a lack of political will at all levels of the system to end impunity. "Thus Colombia clearly fails to fulfil its obligations under international law to ... punish those responsible" (UN doc. E/CN.4/1995/111 para.107.).

The Prosecutor General may investigate human rights violations and apply administrative sanctions. The maximum sanction is dismissal. The Delegate for Human Rights of the Prosecutor General's office estimates a 30-40 percent success rate in prosecuting violations in cases where there are investigations, although the Delegate noted that only a small percentage of reported cases actually conclude with an investigation.⁷¹ As a result, it may be said that there are "relative levels of impunity in Colombia" (UN doc. E/CN.4/1995/111 para. 78).⁷² However, the Prosecutor General reports "in many cases, the decisions of the military justice system are in open contradiction to the decisions of the Prosecutor, under which circumstances disciplinary sanctions lose much of their dissuasive power" (*Procuraduría General de la Nación* 1993: 17). Colombian law provides no means of reconciling inconsistent decisions and the Article 9 of the Military Penal Code specifies that no person may be tried two times for the same offence.⁷³

Impunity and the military justice system have been the target of extensive national and international criticism. The key issue is the legal and moral definition of the

⁷¹ Interview with the Delegate for Human Rights of the Prosecutor General's Office, Bogotá, October 1994.

⁷² Applying administrative sanctions has an important moral value in the absence of penal sanctions. However, such sanctions rarely correspond with the seriousness of the crime in question.

⁷³ In one well known case, a military court acquitted Lieutenant Colonel Luis Filipe Becerra Bohórquez of the massacre of 13 peasants at Rio Frio in October, 1993. The military claimed the peasants were members of a guerrilla group and were killed in combat. Subsequent investigations by the Prosecutor General and a separate commission of national and international human rights organizations concluded the peasants were not guerrillas and that the military had invented the story to cover their actions. After the Prosecutor's investigation Becerra was dismissed from the military. However, no further action was taken against him. Becerra had also been investigated by the Prosecutor General for organizing two earlier massacres of 20 banana workers in the *Honduras* and *La Negra* plantations on March 4, 1988, Urabá, Antioquia. The military officers who participated in the Urabá massacre were tried by military courts. Then *Major* Becerra, was supposed to be under arrest between August 31, 1988 and December 7, 1989, and again after August 17, 1990, pursuant to warrants issued by the Public Order Court and later by the Appellate Public Order Tribunal. Nonetheless, Becerra was promoted to Lieutenant Colonel, attended a course in the United States when he should have been in custody, and was subsequently transferred to the Department of Public Relations (E-5) at the General Command of the Army. One Second Lieutenant and two Corporals who also participated in the massacre were promoted to respectively Full Lieutenant and to Sergeants (Americas Watch 1992: 14-15).

concept of "act of service". Human rights organizations maintain that abuses can not be considered within the concept of public or military service and, therefore, must be tried under ordinary law. The military and Presidents Samper and Gaviria have strongly resisted all attempts to try violations allegedly committed by members of the public forces under civilian jurisdiction. Military officials claim that only "the interests of the subversives would benefit" from such reforms.⁷⁴

The debate intensified between June and October, 1994, after Colombia signed the OAS Inter-American Convention on the Forced Disappearance of Persons. The position taken by the Colombian government reflects its unwillingness to move decisively to end impunity. Colombia publicly committed itself to supporting the OAS convention, making no official mention that it was considering reservations. Laws related to forced disappearance and the convention were ratified by the Congress and Senate (*proyecto de leyes* 152 of 1992 and 331 of 1993) in June, but were vetoed by President Gaviria in the last days of his administration. A version of the law incorporating the changes proposed by Gaviria was presented to the new Congress by President Samper and ratified on October 4, 1994.

In a letter to the Congress and Senate dated July 6, 1994, Gaviria called the OAS convention "unconstitutional". He proposed it be ratified with three reservations. Most importantly, Article IX of the convention states that persons accused of causing a disappearance will be tried under ordinary law. Processing such charges under the military justice system is specifically prohibited and causing a disappearance may not be considered an "act of military service". According to Gaviria, these provisions conflict with Article 221 of the Colombian constitution which states that members of the Public Forces can only be tried under military law.

The People's Defender "does not share the views of the government ... forced disappearance is a civil crime and can not be tried under the public force's own jurisdiction... Disappearance is not a crime related to the responsibilities of the military and police as described by the constitution."⁷⁵ While two high-ranking Generals argued in published newspaper articles that allowing members of the Public Forces to be tried in civilian courts would undermine the system of military discipline, the Prosecutor General told the Senate it "would not modify or undermine the military system, only clarify the notion of public service in the light of the constitution".⁷⁶

⁷⁴ Major General Bonett as quoted in *El Tiempo*, 3 October, 1994.

⁷⁵ Letter from the People's Defender to Dr. Juan Guillermo Angel Mejía, President of the Senate, 29 July, 1994.

⁷⁶ Letter from Hernando Valencia Villa, Prosecutor Delegate for Human Rights to Dr. Jorge Ramón Elias Nader, (then) President of the Senate, 12 July, 1994.

During the 1994 election campaign and the debate over the OAS Convention, President Samper promised to introduce reforms to the military justice system designed to reduce the instance of impunity. He has since specified that any reforms will take place in the context of the existing military justice system, effectively leaving the framework of the system itself untouched.

6.3 Some implications of impunity for democratic consolidation in Colombia and Latin America

Chapter 1.5 noted that there are almost no instances in Latin America where the persons responsible for human rights violations during the decades of military dictatorship have been held accountable for their actions through the due process of law. As in Colombia, pacts of impunity were negotiated throughout Latin America as a condition of transition and subsequently institutionalized in the civilian polity through legal instruments which prevented future prosecution (Loveman 1994: 115-118). Situations of impunity have significant consequences for the consolidation of democratic governance as the issue "strikes at the very heart of the limits and possibilities of transforming the former authoritarian state" (McSherry 1992: 464).

Impunity represents an "imposed limitation on the transition process itself as well as on important constitutional aspects of the political system that followed" which compromises the consolidation process (Loveman 1994: 117). The implications of situations of impunity have not been widely analysed by scholars. However, there is a body of research which suggests that impunity fundamentally undermines the process of democratic consolidation by: (i) allowing former authoritarian actors to retain sufficient political autonomy to condition the actions of democratically elected civilian regimes; and (ii) placing the institutions and individuals responsible for past human rights violations above the rule of law, in effect providing a guarantee against accountability (Loveman 1994: 116-119; McSherry 1992: 463-465).

Echoing these conclusions, an international tribunal of non governmental organizations convened in 1992 found that impunity has undermined the process of the consolidation of democracy in Colombia and Latin America by: (i) leaving intact the state institutions and structures responsible for human rights violations, and, therefore, allowing violations to continue; (ii) undermining the rule of law and the legitimacy of democratic institutions; (iii) destroying public confidence in the judicial system; (iv) legitimizing, before civil society, conduct which destroys accepted norms of civilized human behaviour, creating an acceptance of political violence; and (v) encouraging private justice (LIDERLIP 1991).

At another level, impunity is a highly emotive issue whose implications extend well beyond the relative democratic value which may or may not exist in formal

state institutions. Despite the transition to democratic governance the issue of reconciliation for past human rights violations is still widely debated in civil society throughout Latin America. Addressing deeply held and emotional sentiments in civil society represents the "unfinished business" of democratic transition. As political, economic, social and cultural factors all interact to create the environment in which state institutions function, it can be held that allowing issues of past abuses of power to remain unresolved contributes to the a general destabilization which hinders consolidation (Garretón 1995: 156-157).

The debate regarding impunity has been fuelled by recent discoveries in Paraguay, Chile, Argentina and Brazil which indicate that the number of human rights violations which occurred during the years of military dictatorship is significantly higher than officially recorded (*Guardian Weekly*, 19 March, 1995). The effect of the debate has been to provoke a "belated public examination of conscience ... and open old wounds which have never healed" (*Guardian Weekly*, 7 May, 1995). For example, it was revealed that military officers in Argentina "consulted the Catholic Church for a Christian way of eliminating political prisoners" (*Guardian Weekly*, 8 March, 1995). As a result of this and other revelations, the Church, which was closely aligned with the Argentine military, has called for a public review of its conduct during the "Dirty War". The decision has reopened old and unresolved conflicts within the Church, and between the Church and civil society. Commented one priest, "if there is one thing that is lost in the terror, it is the truth. We acted without conscience and ... now we must face that we were cowards" (*Herald Tribune International*, 10 May, 1995). However, the official position of the Government of Argentina is to "forget the past" and no new official process of reconciliation is being considered (*Herald Tribune International*, 30 April, 1995).

In the case of Colombia, empirical evidence presented throughout this study suggests that impunity has allowed politically motivated violence to occur. However, many observers also argue that impunity is a decisive factor contributing to the violence which is generalized in society at large. Impunity is not restricted simply to the instance of human rights violations. Rather, it also occurs in relation to the prosecution of common crime. In April, 1994, the National Department of Planning revealed figures which concluded "the probability that a [common] crime will not culminate in a judicial determination of culpability is 97 percent in Colombia" (UN doc. E/CN.4/Sub.2/1994/NGO/29 para.c). The high levels suggest a general breakdown of the legal system which is frequently attributed to the lack of legitimacy of state institutions. In this respect, the Prosecutor General found that, "the high instance of impunity is a cause and not a consequence of violence" (*Procuraduría General de la Nación* 1994: 18).

The effect of impunity is particularly corrosive when it is enjoyed by agents of the state who act outside the rule of law, effectively legitimizing other forms of non political violence. For example, impunity encourages persons to seek private justice. One human rights activist noted "it is quicker and cheaper to hire a *sicario*

(paid assassin) than take a case to court." ⁷⁷ In interviews, children displaced by political violence indicated that "we lose hope for the future. Any day they can come and kill me like they did to my father and nobody will do anything, so why should I go to school or think about tomorrow".⁷⁸ Colombian social workers note that violence in itself is not enough to cause longterm depression often witnessed in these children. "[This] only happens when violence is accompanied by impunity, which causes a feeling among the children that there is no justice and no security for their families ... every day we see that hopelessness itself is the cause of further domestic violence".⁷⁹

⁷⁷ Interview, Bogotá, 12 October 1994.

⁷⁸ Interview, Bogotá, October, 1993.

⁷⁹ Interview, Bogotá, October, 1993.

7. Conclusion

This study has focused on the limitations of elite pacts as a mechanism for democratic transition and consolidation. The concept of elite pacts has been a central analytical component of theories used to explain the process of democratic transition and consolidation occurring in Latin America since the late 1970s. Colombia is widely regarded by transition scholars to be a successful example of a country which made the transition from authoritarian to democratic governance through an elite pact mechanism; the 1958 National Front agreement between the Liberal and Conservative parties. However, the post-transition polity in Colombia is characterized by extreme levels of political violence. The weight of empirical evidence demonstrates that the Colombian state is the principle actor responsible for that violence. By considering the limitations of elite pacts, this study has attempted to explain the paradox between the coexistence of formal liberal democracy and gross and systematic human rights violations.

Contrary to the outcomes anticipated by elite pact related transition theory, this study has argued that transition by pacts has resulted in the evolution of a restricted political system in Colombia characterized by endemic political violence and gross and systematic human rights violations. In the face of growing social protest and a crisis of legitimacy of state institutions in the eyes of civil society, the response of the Colombian state has been a dual policy of repression while at the same time state officials promote the protection of human rights and democracy. This study has presented empirical evidence to explain the origins and mechanisms of that dual policy. It has also argued that the restricted nature of the polity and violence in Colombia are a direct and implicit result of the conditions established by National Front elite pact.

Empirical and historical information presented in this study has argued that the inability of transition theory to fully account for the Colombian paradox is found primarily in three factors. The combination of these three factors are important in explaining both the limits of transition theories and the current situation in Colombia:

Downplaying the role of civil society - Transition theories give only limited consideration to the role of civil society in the transition and consolidation process. In particular, transition theories downplay or ignore the importance of the interactions and conflicts between elites and new challengers arising from civil society.

Scholars using the example of Colombia tend to argue that the National Front pact was a response to military dictatorship and the violent inter-party conflict. The pact mechanism is interpreted as an attempt to secure a democratic transition to address both those factors. The fact that Colombia subsequently returned to a formal liberal democracy, uninterrupted by authoritarian reversals, is interpreted as a result of the success of the National Front and the democratic intentions of state leaders. However, scholars employing transition theory do not consider that, in many societies, the basic conflict dimension is not necessarily between the elites themselves. Rather, it occurs between elites and new challengers in civil society who are perceived to threaten elite interests. This is particularly true for societies with growing economic disparity, including Colombia and many other Latin American countries.

This study has argued that, in the case of Colombia, it was precisely the interactions and conflicts between civil society and elites (civilian and military) which motivated the pact makers and determined the characteristics of the National Front. This study has maintained that an important defining element of the elite pact negotiation process, the inclusion of new challengers, was missing in the Colombian transition. Actors from outside the traditional Liberal and Conservative parties were explicitly excluded from the process. Their exclusion is crucial to understanding developments in Colombia subsequent to the 1958 and the restricted nature of the polity consolidated in that period.

Downplaying historical structures and constants: Bolívar's knot - Most transition scholars emphasize the relationship between the mode of transition and the prospects for democratic consolidation. However, in using Colombia as an example of a successful pacted transition they appear to largely overlook the historical structures and constants existing prior to military rule and the implications of those constants for democratic consolidation.

The National Front was an attempt by the pact makers to restore and institutionalize historical constants and extend those constants into the post-transition polity. In practical terms this implied restoring the exclusive control over state apparatus and resources historically enjoyed by the two traditional parties. Therefore, an understanding of historical circumstances is critical in explaining the National Front agreement and its legacy.

In addition, by downplaying the importance of modernization and structural transformation occurring in Colombian society between the 1930s and the 1950s transition theory does not account for the implications of the *silent revolutions* and the weakening of clientelistic mechanisms of political control. This study has argued for the importance of analyzing transition processes in a larger historical context. Seen in this larger context, the National Front pact was based on anti-democratic objectives and was not a viable mechanism for transition given the many changes in Colombian society, including growing demands for political

participation and representation arising from new sectors of civil society.

The civilian elite-Public Forces alliance and its importance for democracy - Finally, transition theories consider pacts between the civilian and military elites as crucial for securing a transition to democracy. Arguments appear to be based on the assumption that civilian and military elites are competing actors. Within a democratic polity, therefore, scholars maintain that the military must assume a subordinate role to civilian power. However, the transition scholars cited in this study do not appear to consider a situation where a civilian-military elite alliance against new challengers exists as the cornerstone of a post-transition polity. In the case of such an alliance the military may assume a subordinate position to civilian authority and still be granted the relative autonomy it needs to pursue internally generated doctrines of public order and internal security.

Military subordination to civilian control is one of the conditions which leads scholars to characterize Colombia as a democracy. However, these scholars do not fully consider several important aspects of the Colombian case: (i) historically, the Colombian military has been subordinate to civilian power. Many aspects of this subordination actually continued during the period of military rule during the 1950s, and were institutionalized in the National Front pact. In this one regard the National Front did not alter historical patterns of civilian-military relations; (ii) however, this study has used empirical evidence to argue that the civilian elites and the military establishment formed a new axis of alliance in the face of rising opposition from new challengers in civil society. This alliance was based on the protection of common interests from a commonly perceived threat. Under the terms of the National Front pact the military remains in its subordinate position to civilian elites. Their role within this alliance is to act as the guarantor of the political system. In exchange, the military was given relative autonomy to control matters related to internal security. Therefore, subordination and autonomy can occur simultaneously when they happen within the context of protecting interests commonly held between the civilian elites and the military and a consensus exist between the parties.

The new civilian-military alliance is neglected by scholars. Debate regarding the relative values of military dictatorship versus civilian rule is, therefore, interpreted in a stereotypic way rather than by considering the *de facto* role of the military in the current violence or the fact that subordination and violence can be part of the same security policy. This study has argued, therefore, that the simple existence of uninterrupted military subordination to the civilian power does not in itself imply a democratic polity. In this light, it can also be said that civilian control over the military is not a guarantee for democracy and respect for human rights. Further, this study has used empirical evidence to explain that an authoritarian reversal in Colombia is neither likely or necessary as there is no fundamental conflict between the civilian elites and the military. Without the benefit of this information, the conflict in Colombia after 1958 is often interpreted as occurring

between the state and armed opposition groups and drug barons rather than an elite (civilian and military)-new challengers conflict.

As a result of the narrow consideration of civilian-military relations and the relationship between elites and civil society scholars also overlook the pacts of autonomy and impunity established between the civilian elites and the military subsequent to the National Front. These pacts together with the National Front pact allow the paradox between formal liberal democracy and political violence to exist. It was precisely the mobilization in civil society which determined the objectives and mechanisms of these two additional pacts.

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