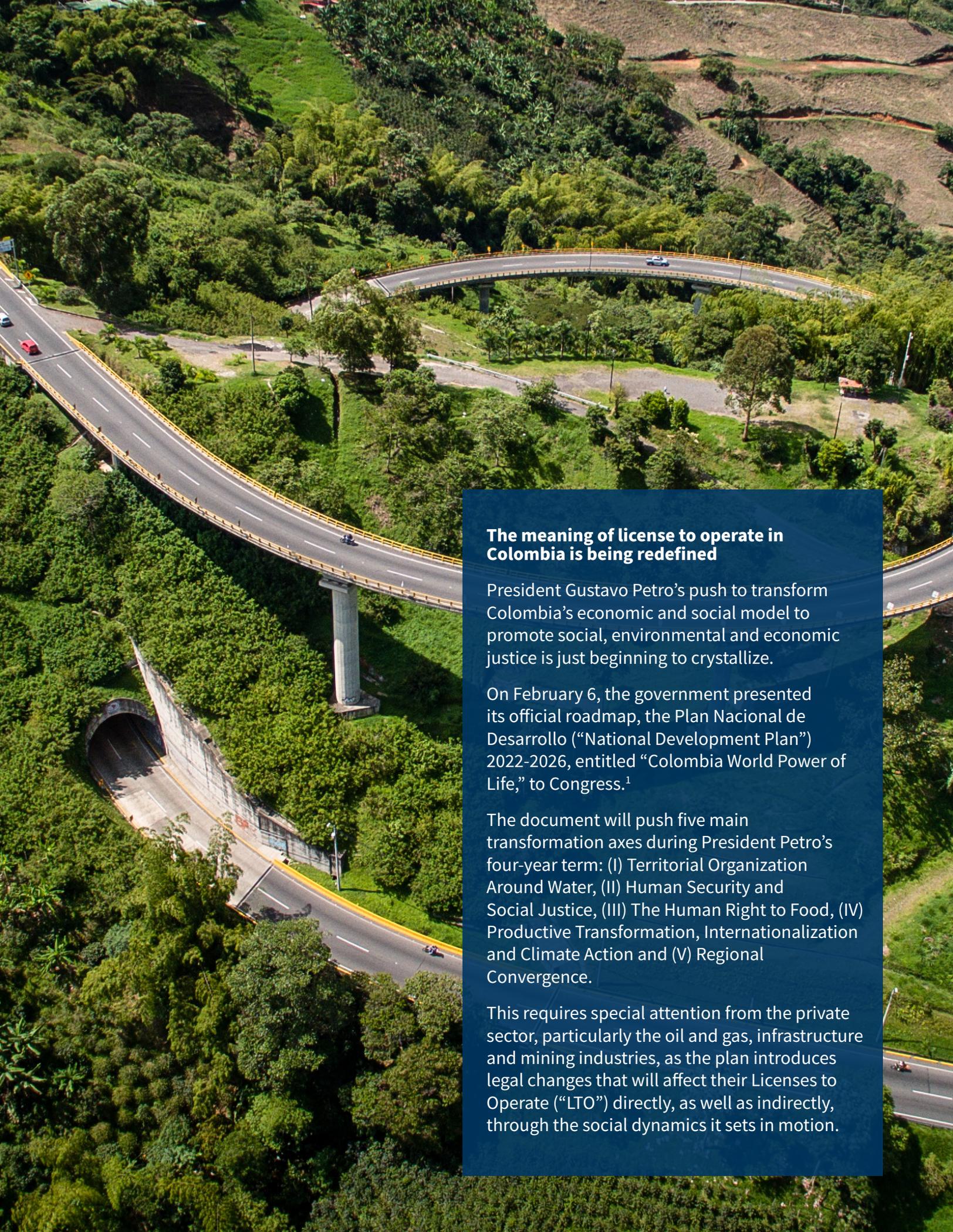


# — UNDERSTANDING THE ADMINISTRATION OF GUSTAVO PETRO

2023 LATIN AMERICA INSIGHTS REPORT

*Insights from the U.S., Mexico, Brazil & Colombia*

CHAPTER IV-A VIEW FROM COLOMBIA



## **The meaning of license to operate in Colombia is being redefined**

President Gustavo Petro's push to transform Colombia's economic and social model to promote social, environmental and economic justice is just beginning to crystallize.

On February 6, the government presented its official roadmap, the Plan Nacional de Desarrollo ("National Development Plan") 2022-2026, entitled "Colombia World Power of Life," to Congress.<sup>1</sup>

The document will push five main transformation axes during President Petro's four-year term: (I) Territorial Organization Around Water, (II) Human Security and Social Justice, (III) The Human Right to Food, (IV) Productive Transformation, Internationalization and Climate Action and (V) Regional Convergence.

This requires special attention from the private sector, particularly the oil and gas, infrastructure and mining industries, as the plan introduces legal changes that will affect their Licenses to Operate ("LTO") directly, as well as indirectly, through the social dynamics it sets in motion.

## The National Development Plan and its implications for key sectors

### Centrality of water and community participation elevated via infrastructure development

Water plays a central role in the plan. It is viewed as a fundamental right that should be made accessible, thus making water rights a point of contention between public and private stakeholders in infrastructure projects.

Local communities come to the fore through the plan. Community Action Juntas (“JACs”) will gain decision-making clout on municipal rulings and budget distribution, which may signify a shift in local engagement and advocacy strategies for the private sector. Decentralization will likely have an impact on national and regional entity interaction, as well as social and environmental licensing processes. In this scenario, the private sector ought to pursue proactive outreach efforts to community stakeholders to ensure open and effective communication.

The plan’s treatment of infrastructure financing is also notable. The government may push a narrative in which it questions the viability of the concession model and, in consequence, of financial mechanisms such as toll payments. In terms of financial instruments, the document contemplates a variety of mechanisms, including public funds, national budget allocation, royalties and public works tax deduction schemes.

Both public and private infrastructure projects will be scrutinized insofar as they contribute to the government’s “accelerated energy transition”. Firms will need to devote additional resources to the implementation of processes, new baselines, access to commodities and compensation plans for deforestation. At the same time, the transition enables a wider scope for public and private partnerships.



**In light of the National Development Plan, the Ministry of Transportation is reactivating the railway and fluvial systems, increasing airport capacity and promoting the development of specialized intermodal logistics platforms. In addition, the ministry’s roadmap considers the development of integrated public mobility systems using clean energy, the reduction of bureaucracy and increased transparency in the structuring of projects and government contracts. The ministry demands project participants strengthen dialogue with vulnerable and diverse local communities to encourage their project participation.<sup>2</sup>**

### Uncertainty surrounds oil, gas and renewables in the energy transition

Energy transition is the foundation of the National Development Plan’s fourth axis, “Productive transformation.”

Under the plan, gas is considered a key substitute for coal, firewood and household fuels.<sup>3</sup> Green and white hydrogen (hydrogen produced with no greenhouse gas emissions and naturally-occurring geological hydrogen, respectively) are considered valid sources for the energy transition. The omission of oil from the plan, however, is a position in itself. Regarding current and future oil exploration contracts, the government’s signaling has been mixed.

The government will continue to evaluate current oil and gas contracts in order to determine what is necessary to guarantee energy security. Fuel price determination will be adjusted to promote energy transition and the creation of “Energy Communities”: Indigenous, Afro-Colombian, Raizal and Palenquero communities that self-generate their energy from non-traditional renewable sources will receive support from public funds.<sup>4</sup>

Decarbonization of the economy is an overarching goal. The plan creates a National Registry of Greenhouse Gases (“RENARE”), under the Ministry of Environment, to administer all initiatives aiming to compensate for carbon emissions.<sup>5</sup>

Environmental protection is considered a prerequisite for any energy project. The environmental licensing process will be revised and new control and evaluation mechanisms will be created. Granted licenses may be also revised.

As in the case of infrastructure, energy projects are subject to active community participation, whereby community members will act as decision makers in local planning.

### Increased scrutiny confronts mining

The National Development Plan's axes of transformation declare the intention to abandon economic dependence on mining and replace it with other activities that are in "harmony" with nature.

The aforementioned centrality of water as a fundamental human right will impact exploration and mining permits. The new Territorial Water Councils (CTAs) will supervise extractive activities, and it appears that extraction will be impossible when water resources are present.

More specifically, two critical articles in the National Development Plan pertain to mining. Article 184 outlines associative mining projects.<sup>6</sup> It orders the Ministry of Mines and the Colombian Geological Service to structure the National Geoscientific Knowledge Plan to have adequate information on the soil and subsoil, which allows the planning of its use, in accordance with the axes of transformation of the plan. All the while, article 186 prohibits large-scale open-pit mining for thermal coal.<sup>7</sup>

Furthermore, the National System of Agrarian Reform and Rural Development described in articles 38 and 39 entails that mining industries should participate in consultation and dialogue around territorial planning to evaluate the potential impact an extractive project could have on food production in its immediate area.

*Large-scale infrastructure, energy and mining projects that are already underway are increasingly vulnerable to the legal uncertainty these politically driven changes are bringing, leaving room for contractual and litigious action.*

### Private sector to lead the way in times of change

Current trends suggest that disparate commercial objectives, distinct value standards, regional differences and competing project pursuits prohibit the private sector from having productive conversations about business and public policy.

In this context, the private sector continues to face challenges in developing cohesive messaging and an effective engagement strategy with the national government. Perhaps even more troublesome is that some traditional trade associations – historically seen as strong advocates for private sector interests – are encountering serious resistance from their members to engage with the government. This has prompted several trade associations to change their directors in pursuit of a new tone that is less confrontational and more propositional, seeking out synergies between firms' objectives and governmental priorities.

This is a step in the right direction. To advance its goals, the private sector must understand that any approach to the government must leverage the most strategic angle. Firms should avoid falling into political popularity contests around hot-button issues and instead focus on defending the legitimacy of their sector in respectful, constructive and humble terms, by pursuing discussions at a technical level that help foster consensus. Only proactively, with proposals and an empathetic grasp of the government's main goals, will companies be able to discuss solutions to protect their core objectives.

President Gustavo Petro has insisted on the importance of having an open dialogue with all actors in society, prioritizing those who were seen to have no voice. Still, many question who exactly will have access to the government amid an expanding pool of administration influencers and diversity of voices within the administration. The answer lies with effective advocates who can demonstrate a solid grasp of the Petro Administration's governing principles and argue for their positions based on alignment with – not against – those principles.

## ENDNOTES

1. “Plan Nacional de Desarrollo 2022-2026 ‘Colombia Potencia Mundial de la Vida,’” Departamento Nacional de Planeación (Last accessed February 17, 2023), [https://colaboracion.dnp.gov.co/CDT/portalDNP/PND-2023/2023-02-07-Proyecto-del-ley-PND-2022-2026-\(Articulado\).pdf](https://colaboracion.dnp.gov.co/CDT/portalDNP/PND-2023/2023-02-07-Proyecto-del-ley-PND-2022-2026-(Articulado).pdf).
2. “¿Qué Podemos esperar del plan nacional de desarrollo 2022-2026 en materia de infraestructura de transporte?,” CMS Abogados (Last accessed February 10, 2023) <https://cms.law/es/col/publication/que-podemos-esperar-del-plan-nacional-de-desarrollo-2022-2026-en-materia-de-infraestructura-de-transporte>
3. “Plan Nacional de Desarrollo”, p. 106.
4. Ibid, p. 158.
5. Ibid, p. 104.
6. Ibid, p. 104.
7. Ibid, p. 106.



**JORGE DEL CASTILLO**

Colombia Lead, Strategic Communications and Public Affairs, Latin America



**ANA MARÍA MUÑOZ**

Strategic Communications and Public Affairs, Latin America

For questions, please contact [Jorge Del Castillo](mailto:jorge.delcastillo@fticonsulting.com) at [jorge.delcastillo@fticonsulting.com](mailto:jorge.delcastillo@fticonsulting.com)

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# FTI Consulting Strategic Communications Latin America Practice

## **WASHINGTON DC**

555 12th Street, NW  
Suite 700  
Washington, DC 20004  
United States  
Tel: +1 202 312 9100  
Fax: +1 202 312 9101

## **HOUSTON**

1301 McKinney Street  
Suite 3500  
Houston, TX 77010  
United States  
Tel: +1 800 349 9990  
Fax: +1 713 353 5459

## **MEXICO CITY**

Boulevard Manuel Ávila Camacho No. 126,  
oficina 6B  
Lomas de Chapultepec  
Mexico, CDMX 11000  
Mexico  
Tel: +52 55 5540 7023  
Fax: +52 55 5540 7024

## **BOGOTÁ**

Calle 93#11a-11, Oficina 701.  
Bogota  
Colombia  
Tel: +57 1 319 8400

## **SÃO PAULO**

Av. Presidente Juscelino Kubitschek, 1327 – 3º andar  
Condomínio Edifício Internacional Plaza II  
Itaim Bibi  
São Paulo SP 04543-011  
Brazil  
Tel: +55 11 97227 7868  
Fax: +55 11 3078 0144