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## Mexico: An Update Of The Legal Framework For Plant Varieties In Mexico

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Last September, a bill of the Plant Varieties Law (PVL) was submitted by the Democratic Revolution Party (PRD), which is under review at the Mexican Congress in the Senate.

The main aim of this bill is pretending to include in the PVL the term "phytogenetic resource", which is defined as any genetic material that can be used directly or for the improvement of any plant variety and that requires specific protection to assure its conservation and sustainable exploitation.

Additionally, the bill proposes the limitations in the exploitation of phytogenetic resources when there are risks for the human or animal health or for the environment, as well as the establishment of quality control and regulations to verify the fulfillment of legal and statutory requirements for the exploitation of said phytogenetic resources and the creation of a Phytogenetic Resources Center for their conservation and sustainable utilization.

Notwithstanding the importance of the above mentioned, due to the biological diversity existing in Mexico, the matter regarding phytogenetic resources should be included in a law other than the PLV, i.e. a law created *ex profeso* for phytogenetic resources, since it is related to the exploitation of certain plants but not to the plant breeder's rights.

According to this bill, genetic manipulation is included as a technique for the development of plant varieties. Nevertheless, it is not taking into account that a plant can be genetically modified and still not meet the requirements to be protected as a plant variety, i.e. novelty (except for the inserted gene), distinctness, uniformity and stability.

The proposal also includes a reduction in the period of protection, from 18 to 15 years for forest trees, fruit trees, vines and ornamental trees and their rootstocks, and from 15 to 10 years for the other species. This change in the breeder's rights is against Article 8 of the 1978 Act of the UPOV Convention and its inclusion would be in breach of said 1978 Act.

In this sense, another aim of the subject bill is to establish that phytogenetic resources are of public domain and nobody can claim rights over them, therefore limiting their access for feeding, agriculture or research. This matter clearly breaches Article 27, paragraph 3 b) of TRIPS, which establishes that plant varieties must be protected.

As it can be seen from the above, starting from the fact that phytogenetic resources need to be protected in Mexico, the bill of the PLV pretends to limit the rights of the breeders and to reduce the time of protection for plant varieties. Nevertheless, it will depend of the activities carried out by the interested party and of the economical and political conditions of the country if the bill under review is enacted.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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