



Focus on the Global South
and GRAIN

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Iraq's new patent law: A declaration of war against farmers

CLARIFICATION - February 2005 The report jointly issued by Focus on the Global South and GRAIN in October 2004 on Iraq's new patent law has received a lot of attention worldwide. It has also generated a misunderstanding that we wish to clarify. *The law does not prohibit Iraqi farmers from using or saving "traditional" seeds. It prohibits them from reusing seeds of "new" plant varieties registered under the law - in practical terms, this means they cannot save those seeds for re-use. The report has been revised to express this more clearly.*

When former Coalition Provisional Authority (CPA) administrator L. Paul Bremer III left Baghdad after the so-called "transfer of sovereignty" in June 2004, he left behind the 100 orders he enacted as chief of the occupation authority in Iraq. Among them is Order 81 on "Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety."¹ This order amends Iraq's original patent law of 1970 and unless and until it is revised or repealed by a new Iraqi government, it now has the status and force of a binding law.²

With important implications for farmers and the future of agriculture in Iraq, this order is yet another important component in the United States' attempts to radically transform Iraq's economy.

Who gains?

For generations, small farmers in Iraq operated in an essentially unregulated, informal seed supply system. Farm-saved seed and the free innovation with and exchange of planting materials among farming communities has long been the basis of agricultural practice. This is now history. The CPA has made it illegal for Iraqi farmers to re-use seeds harvested from new varieties registered under the law. Iraqis may continue to use and save from their traditional seed stocks or what's left of them after the years of war and drought, but that is not the agenda for reconstruction embedded in the ruling. The purpose of the law is to facilitate the establishment of a new seed market in Iraq, where transnational corporations can sell their seeds – genetically modified or not, which farmers would have to purchase afresh every single cropping season.

While historically the Iraqi constitution prohibited private ownership of biological resources, the new US-imposed patent law introduces a system of monopoly rights over seeds. Inserted into Iraq's previous patent law is a whole new chapter on Plant Variety Protection (PVP) that provides for the "protection of new varieties of plants." PVP is an intellectual property right (IPR) or a kind of patent for plant varieties which gives an exclusive monopoly right on planting material to a plant breeder who claims to have discovered or developed a new variety. So the "protection" in PVP has nothing to do with conservation, but refers to safeguarding of the commercial interests of private breeders (usually large corporations) claiming to have created the new plants.

To qualify for PVP, plant varieties must comply with the standards of the UPOV³ Convention, which requires them to be new, distinct, uniform and stable. Farmers' seeds cannot meet these criteria, making PVP-protected seeds the

exclusive domain of corporations. The rights granted to plant breeders in this scheme include the exclusive right to produce, reproduce, sell, export, import and store the protected varieties. These rights extend to harvested material, including whole plants and parts of plants obtained from the use of a protected variety. This kind of PVP system is often the first step towards allowing the full-fledged patenting of life forms. Indeed, in this case the rest of the law does not rule out the patenting of plants or animals.

The term of the monopoly is 20 years for crop varieties and 25 for trees and vines. During this time the protected variety *de facto* becomes the property of the breeder, and nobody can plant or otherwise use this variety without compensating the breeder. This new law means that Iraqi farmers can neither freely legally plant nor save for re-planting seeds of any plant variety registered under the plant variety provisions of the new patent law.⁴ This deprives farmers what they and many others worldwide claim as their inherent right to save and replant seeds.

Corporate control

The new law is presented as being necessary to ensure the supply of good quality seeds in Iraq and to facilitate Iraq's accession to the WTO⁵. What it will actually do is facilitate the penetration of Iraqi agriculture by the likes of Monsanto, Syngenta, Bayer and Dow Chemical – the corporate giants that control seed trade across the globe. Eliminating competition from farmers is a prerequisite for these companies to open up operations in Iraq, which the new law has achieved. Taking over the first step in the food chain is their next move.

The new patent law also explicitly promotes the commercialisation of genetically modified (GM) seeds in Iraq. Despite serious resistance from farmers and consumers around the world, these same companies are pushing GM crops on farmers around the world for their own profit. Contrary to what the industry is asserting, GM seeds do not reduce the use of pesticides, but they pose a threat to the environment and to people's health while they increase farmers dependency on agribusiness. In some countries like India, the 'accidental' release of GM crops is deliberately manipulated⁶, since physical segregation of GM and GM-free crops is not feasible. Once introduced into the agro-ecological cycle there is no possible recall or cleanup from genetic pollution⁷.

As to the WTO argument, Iraq legally has a number of options for complying with the organisation's rules on intellectual property but the US simply decided that Iraq should not enjoy or explore them.

Reconstruction facade

Iraq is one more arena in a global drive for the adoption of seed patent laws protecting the monopoly rights of multinational corporations at the expense of local farmers. Over the past decade, many countries of the South have been compelled⁸ to adopt seed patent laws through bilateral treaties⁹. The US has pushed for UPOV-styled plant protection laws beyond the IPR standards of the WTO in bilateral trade through agreements for example with Sri Lanka¹⁰ and Cambodia¹¹. Likewise, post-conflict countries have been especially targeted. For instance, as part of its reconstruction package the US has recently signed a Trade and Investment Framework Agreement with Afghanistan¹² that would also include IPR-related issues.

Iraq is a special case in that the adoption of the patent law was not part of negotiations between sovereign countries. Nor did a sovereign law-making body enact it as reflecting the will of the Iraqi people. In Iraq, the patent law is just one more component in the comprehensive and radical transformation of the occupied country's economy along neo-liberal lines by the occupying powers. This transformation would entail not just the adoption of favored laws but also the establishment of institutions that are most conducive to a free market regime.

Order 81 is just one of 100 Orders left behind by Bremer and among the more notable of these laws is the controversial Order 39 which effectively lays down the over-all legal framework for Iraq's economy by giving foreign investors rights equal to Iraqis in exploiting Iraq's domestic market. Taken together, all these laws, which cover virtually all aspects of the economy – including Iraq's trade regime, the mandate of the Central Bank, regulations on trade union activities, etc. – lay the bases for the US' bigger objective of building a neo-liberal regime in Iraq.

Order 81 explicitly states that its provisions are consistent with Iraq's "transition from a non-transparent centrally planned economy to a free market economy characterised by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect."

Pushing for these "reforms" in Iraq has been the US Agency for International Development, which has been implementing an Agricultural Reconstruction and Development Program for Iraq (ARDI) since October 2003. To carry

it out, a one-year US\$5 million contract was granted to the US consulting firm Development Alternatives, Inc.¹³ with the Texas A&M University¹⁴ as an implementing partner. Part of the work has been sub-contracted to Sagric International¹⁵ of Australia. The goal of ARDI in the name of rebuilding the farming sector is to develop the agribusiness opportunities and thus provide markets for agricultural products and services from overseas.

Reconstruction work, thus, is not necessarily about rebuilding domestic economies and capacities, but about helping corporations approved by the occupying forces to capitalise on market opportunities in Iraq.¹⁶ The legal framework laid down by Bremer ensures that although US troops may leave Iraq in the conceivable future, US domination of Iraq's economy is here to stay.

Food sovereignty

Food sovereignty is the right of people to define their own food and agriculture policies, to protect and regulate domestic agricultural production and trade, to decide the way food should be produced, what should be grown locally and what should be imported. The demand for food sovereignty and the opposition to the patenting of seeds has been central to the small farmers' struggle all over the world over the past decade. By fundamentally altering the IPR regime, the US has ensured that Iraq's agricultural system will remain under "occupation" in Iraq.

Iraq has the potential to feed itself. But instead of developing this capacity, the US has shaped the future of Iraq's food and farming to serve the interests of US corporations. The new IPR regime pays scant respect to Iraqi farmers' contributions to the development of important crops like wheat, barley, date and pulses. Samples of such farmers' varieties were starting to be saved in the 1970s in the country's national gene bank in Abu Ghraib outside Baghdad. It is feared that all these have been lost in the long years of conflict. However, the Syria-based CGIAR¹⁷ centre – International Centre for Agricultural Research in Dry Areas (ICARDA) still holds accessions of several Iraqi varieties. These collections that are evidence of the Iraqi farmers' knowledge are supposed to be held in trust by the centre. These comprise the agricultural heritage of Iraq belonging to the Iraqi farmers that ought now to be repatriated. There have been situations where germplasm held by an international agricultural research centre has been "leaked out" for research and development to Northern scientists¹⁸. Such kind of "biopiracy" is fuelled by an IPR regime that ignores the prior art of the farmer and grants rights to a breeder who claims to have created something new from the material and knowledge of the very farmer.

While political sovereignty remains an illusion, food sovereignty for the Iraqi people has already been made near impossible by these new regulations. Iraq's freedom and sovereignty will remain questionable for as long as Iraqis do not have control over what they sow, grow, reap and eat.

Endnotes

¹ Patent, *Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law of 2004*, CPA Order No. 81, 26 April 2004, http://www.iraqcoalition.org/regulations/20040426_CPAORD_81_Patents_Law.pdf

² The PVP provisions will be put into effect as soon as the Iraqi Minister of Agriculture passes the necessary executive orders of implementation in accordance with this law.

³ UPOV stands for International Union for the Protection of New Plant Varieties. Headquartered in Geneva, Switzerland it is an intergovernmental organisation with 53 members, mostly industrialised countries. The UPOV Convention is a set of standards for the protection of plant varieties, mainly geared toward industrial agriculture and corporate interests. See <http://www.upov.org>.

⁴ Chapter Threequarter Article 15 B: *Farmers shall be prohibited from re-using seeds of protected varieties or any variety mentioned...*

⁵ The World Trade Organisation, wherein the Iraqi Government has an observer status.

⁶ <http://www.grain.org/research/contamination.cfm?agenda>

⁷ GRAIN, *Confronting contamination: 5 reasons to reject co-existence, Seedling*, April @004, p1, <http://www.grain.org/seedling/?id=280>

⁸ GRAIN, *PVP in the South: caving in to UPOV* <http://www.grain.org/rights/tripsreview.cfm?id=64>

⁹ GRAIN, *Bilateral agreements imposing TRIPS-plus intellectual property rights on biodiversity in developing countries*

<http://www.grain.org/rights/tripsplus.cfm?id=68>

¹⁰ <http://www.grain.org/brl/?typeid=15>

¹¹ http://www.bilaterals.org/article.php3?id_article=387

¹² http://www.ustr.gov/Document_Library/Press_Releases/2004/September/United_States_Afghanistan_Sign_Trade_Investment_Framework_Agreement.html

¹³ www.dai.com

¹⁴ The University's Agriculture Program "is a recognised world leader in using biotechnology..." & the University works closely with the USDA Agriculture Research Service.

¹⁵ www.sagric.com.au

¹⁶ http://www.export.gov/iraq/market_ops/index.html

¹⁷ Consultative Group on International Agricultural Research (CGIAR) system, with its 16 International Agricultural Research Centres (IARCs) of which ICARDA is one, holds the world's largest collections of plant genetic resources outside their natural habitat, which includes both farmers' varieties and improved varieties.

¹⁸ In 2001 it was discovered that a US plant geneticist had obtained the seeds of the original strain of the famed Thai Jasmine rice, Khao Dok Mali (KDM) 105, from the Philippines-based CGIAR centre - International Rice Research Institute (IRRI). But no Material Transfer Agreement (MTA) signed in the process, despite international obligations on IRRI to enforce this.

Against the Grain is a series of short opinion pieces on recent trends and developments in the areas of biodiversity management and control. It is published by GRAIN on an irregular basis, and is available from our website: www.grain.org. Print copies can be requested from GRAIN, Girona 25, E-08010 Barcelona, Spain. Email: grain@grain.org. This particular *Against the Grain* was produced in collaboration with Focus on the Global South (www.focusweb.org, email: admin@focusweb.org).