

"Cynical and wicked" biopatent law imposed by US on Iraq

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Aid agencies and NGOs across the globe have been reacting with horror to the news that new legislation in Iraq was carefully put in place last year by the United States that will effectively bring the whole of the country's agricultural sector under the control of trans-national corporations. This spells disaster for the Iraqi government and the country's farmers, paving the way for companies like Monsanto and Syngenta to control the entire food chain from planted seed to packaged food products. Iraqi Government Urged to Revoke "Cynical and Wicked" Patent Law

Institute of Science in Society (UK)

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Aid agencies and NGOs across the globe have been reacting with horror to the news that new legislation in Iraq was carefully put in place last year by the United States that will effectively bring the whole of the country's agricultural sector under the control of trans-national corporations. This spells disaster for the Iraqi government and the country's farmers, paving the way for companies like Monsanto and Syngenta to control the entire food chain from planted seed to packaged food products.

The new Iraqi Government is now being urged to revoke Order 81, the offending piece of legislation signed and brought into force by Paul Bremer, the Administrator of the Coalition Provisional Authority, on 26th April 2004.

NGOs have described Order 81 as "cynical and wicked", as the section relating to the registration and protection of plant varieties was slipped in almost as an appendage to an Order dealing with patents, industrial design, disclosure of information and integrated circuits .

The manner in which this Order was imposed on the people of Iraq is an outrage in itself. There was virtually no Iraqi input into the wording of the Order, as the country and its people were on their knees following the Iraq War.

The Preamble to the Order justifies its provisions as "necessary to improve the economic condition of the people of Iraq", desirable for "sustainable economic growth", and enabling Iraq to become "a full member of the international trading system known as the WTO". But when one looks at paragraphs 51 to 79 of the Order, it is clear that they have been designed simply to facilitate the takeover of Iraqi agriculture by western biotechnology corporations.

It is not surprising that Order 81 was written as "enabling legislation" for American corporate interests. The US Agriculture Department, which aided Bremer in writing the Order, was headed by ex-management of the huge US seed and biotech companies, such as Monsanto and Cargill. Ann Veneman, who recently resigned as US Secretary of Agriculture, had a long career working for large US agribusinesses before going to work for the government. So did Dan Amstutz who headed Iraq's agricultural reconstruction.

The Order fits neatly into the US vision of future Iraqi agriculture ? an industrial agricultural system dependent on a small number of cash crops, with large corporations selling both

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chemical inputs and seeds.

It also arises naturally from the USAID programme in Iraq, which unashamedly confirms the thesis that foreign aid programmes are primarily "commercial opportunity" programmes designed for the benefit of American companies.

Iraq's food crisis exploited

Iraq was once self-sufficient in agriculture and the world's number one exporter of dates. It is the acknowledged centre of origin of many cereal varieties that have been exported and adapted worldwide.

Twenty seven percent of Iraq's total land area is suitable for cultivation, over half of which is rain-fed while the balance is irrigable. Wheat, barley, and chickpeas are the primary staple crops, with wheat being traditionally the most important crop. Before the First Iraq War, average annual harvests were 1.4 million tonnes for cereals, 400 000 tonnes for roots and tubers, and 38 000 tonnes for pulses. Over the past 20 years, Iraq's agricultural sector has collapsed, and only half of the irrigable area is now properly utilised. It is not known how many of the country's 600 000 farmers are still able to produce food. Grain production during 2003 was less than (space) one-half the grain production in 1990; and agricultural production has been declining by an average of 2.6 % per year since.

Today more than 50 percent of the population is affected by food insecurity. The Oil-For-Food Programme, while essential to the humanitarian situation in Iraq, was a severe disincentive to food production. Over half of Iraq's total food requirement is imported, and a large portion of the population is dependent upon externally-financed food rations for survival. The World Food Programme (WFP) plays a key role in coordinating the flow of food aid; and recently, three million tonnes of wheat have been imported yearly, mostly from Australia, to be distributed to Iraqis as part of their food rations. Farm machinery and equipment are in short supply amid water shortages, low technology uptake, and a lack of profit incentive. The cost of food rations provided to Iraqis is estimated at over \$2 billion per year.

The Ministry of Agriculture (MOA) officials and the United States Agency for International Development (USAID) Agriculture Reconstruction and Development Program for Iraq (ARDI) are continuing to implement a national wheat production campaign, so as to reduce the dependency on aid. Under the campaign, 1 500 tonnes of wheat seed has arrived in Mosul. ARDI procured the seed to assist the MOA to distribute high quality, certified seed to as many farmers as possible.

Over 400 tonnes of this seed has already been distributed and incorporated into high-profile "reconstruction and re-education" programmes, and another 4 000 tonnes are on their way. We have been unable to discover which varieties are involved, who the seed owners are, and the terms under which the seed stocks are being "donated".

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Foreign aid ? a nice little earner

Order 81, like the other 99 orders brought into law at high speed by Paul Bremer on behalf of the Coalitional Provisional Authority, was conceived by the US administration as part of the plan to install a "friendly and compliant", and essentially colonial regime in Iraq. The Order 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 "transitional reforms" in Iraq has been the USAID, which has been implementing ARDI since October 2003. For this purpose, a one-year US\$5 million contract was granted to the US consulting firm Development Alternatives, Inc, followed by a further \$96 million contract.

There has been great speculation in sections of the American press about the fate of Iraqi oil sales revenues since the invasion. Only a part of it seems to be accounted for, and auditing procedures appear to have been corrupt. Some \$9 billion worth of oil revenues seem to have vanished, and may simply have been recycled by the US Administration as multi-million dollar "aid" from the people of United States to the people of Iraq [7].

ARDI claims it is rebuilding Iraq's farming sector, but its real intention is to develop agribusiness opportunities for western corporations. According to GRAIN and other NGOs, "reconstruction" 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. The legal framework laid down by Bremer ensures that although US troops may leave Iraq in the conceivable (forseeable) future, the US domination of Iraq's economy will be sustained in law by one hundred very convenient Orders.

Order 81

The critical part of Order 81 deals with plant variety protection (PVP). Superficially, its purpose is to protect the rights of those who develop new and improved plant varieties, but it means that in future Iraqi farmers will be forced to plant "protected" crop varieties defined as new, distinct, uniform and stable. The new law makes a very basic change to Iraqi "intellectual property" law, for the first time recognizing the "ownership" of biologic material and paving the way for the patenting of life forms. It also opens the way for genetically modified crops to be introduced into the country. Crucially, there are no special provisions for GM crops - they are treated as no more novel (and no more controversial) than new varieties developed through conventional breeding programmes.

Where ownership of a crop is claimed, seed saving will be banned, and royalties will have to be paid by the farmer to the registered seed "owner". Farmers will be required to sign contracts relating to seed supply and, probably, to the marketing of the harvest. Where GM crops are involved (and possibly in other cases as well) they will also be required to sign contracts for the purchase of herbicides, insecticides and fertilisers.

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Strictly, the new law does not prohibit saving seed from the harvesting of traditional or long-established varieties that are deemed to be "matters of common knowledge". But with Iraqi agriculture in a state of crisis, there are (gap) critical seed shortages; and as mentioned earlier, the "reconstruction" of the food supply system involves (includes) a substantial involvement on the part of USAID and other food donor organizations giving "high quality seed" to farmers along with technical advice. It is inevitable that that (most of this) seed comes from US registered varieties, and that within a year or two, philanthropy will be replaced by the collection of seed royalties. In addition, Order 81 allows plant breeders to claim ownership of old varieties (and to call them "new" varieties) if they are the first to describe or characterize them. They can then also claim ownership of related crops that are "not clearly distinguishable from the protected varieties". The control of all protected varieties will last 20 years for field crops and 25 years for trees and vines. Farmers who save seed or otherwise break their agreements, and farmers unlucky enough to find the adventitious presence of "registered varieties" in their fields, can be prosecuted; or else their harvests, tools and buildings will (may) be destroyed. Conversely, farmers will have no right to claim compensation from the seed owners who, for example, allow their GM crops to pollute organic crops and destroy livelihoods in the process.

Heads I win, tails you lose

In the end, the Iraqi farmer will have two choices. He can go it alone, and try to grow crops from seeds of "traditional" crops that have become rare during decades of war and sanctions; or he can sign up to the food aid / agricultural programme and then buy seeds from companies like Monsanto, Dow, Syngenta and Bayer. If he chooses the first option he may be left out in the cold during the reconstruction programme. If he chooses the second option, after a period of free handouts and advice, he may be trapped into a high-cost cash crop economy from which he will find it impossible to escape. He will also be forced to use seeds that appear to be high yielding but which may in reality turn out to be ill adapted to his local environment; so crop failures and even famine may follow.

It was some 10 000 years ago that the people of the fertile-crescent, now Iraq, began saving seeds from wild grains and planting them. That marked the beginnings of agriculture and western civilization. The saving and sharing of seeds in Iraq has always been a largely informal matter. Local varieties of grain and legumes have been adapted to local (space) conditions over the millennia, and are resistant to extreme heat, drought and salinity. They are not only a national treasure for Iraq but could well provide key genetic resources for agriculture in other parts of the world as global warming takes effect.

In 2002, FAO estimated that 97 percent of Iraqi farmers still saved seed from their own stocks for replanting, or purchased from local markets. Order 81 will put an end to all that, and will brutally disregard the contributions Iraqi farmers have made over hundreds of generations to the development of important crops like wheat, barley, dates and pulses. The new law, in allowing old varieties to be genetically manipulated or otherwise modified and then "registered", amount to legalising the theft of inherited intellectual property owned by traditional farmers, the loss of farmers' freedoms, and the destruction of their food sovereignty.

Germplasm held in trust?

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In recognition of the unique "seed heritage" of Iraq, traditional varieties have been saved as from the 1970s in the country's national gene bank in Abu Ghraib outside Baghdad. There is concern that most of these may have been lost during the latter years of Saddam Hussein and in the recent conflict. However, the Syria-based Consultative Group on International Agricultural Research (CGIAR) centre and the affiliated International Centre for Agricultural Research in Dry Areas (ICARDA) still hold accessions of several Iraqi varieties in the form of germplasm. These collections comprise the agricultural heritage of Iraq and they should now be repatriated. But CGIAR is reluctant to give assurances on this. Ominously, germplasm held by international agricultural research centres belonging to the CGIAR has been "leaked out" for research and development to Northern scientists. Such "biopiracy" is fuelled by an IPR regime that ignores the prior art of the farmer and grants sole rights to a breeder or researcher who claims to have created something new from varieties made by generations of indigenous farmers.

Wider implications

The US has now effectively declared a new war against the Iraqi farmer. Order 81 also goes against the United Nations Millennium Forum Declaration which aspires to "move towards economic reforms aimed at equity, in particular to construct macroeconomic policies that combine growth with the goal of human development and social justice; to prevent the impoverishment of groups that have emerged from poverty but are still vulnerable to social risks and exclusion; to improve legislation on labour standards, including the provision of a minimum legal wage and an effective social system; and to restore people's control over primary productive resources as a key strategy for poverty eradication." The signatories to the Declaration also seek "to promote the use of indigenous crops and traditional production skills to produce goods and services; to exempt developing countries from implementing the WTO Trade-Related Intellectual Property Rights Agreement and to take these rights out of any new rounds of negotiations, ensuring that no such new issues are introduced; and to examine and regulate transnational corporations and the increasingly negative influence of their trade on the environment. The attempt by companies to patent life is ethically unacceptable."

Order 81 is also in clear contravention of the Convention on Biological Diversity (CBD) in that it will increase chemical use, reduce the number of planted crop varieties, accelerate the trend towards monoculture, and decrease biodiversity. Biosecurity will also be negatively affected, and the negative social effects will include population displacement, rural decline and an extension of (poverty and) urban slum dwelling. As to the Biosafety (Cartagena) Protocol dealing with GMOs and their transboundary movement, the Order is apparently designed to flout its aims and objectives, as there is no mention of any regulation of GM crop shipments, plantings, harvesting or export. It is no coincidence that neither the US nor Iraq has signed the CBD and the Cartagena Protocol.

The Food Aid Convention (cf Articles iii, viii and xiii) states that GM food aid should only be offered and accepted after recipient countries have discarded "conventional" alternatives and non-GM food aid as non-options. The United States is a signatory to this Convention, but it has been widely accused of violating it whenever it suits its own interests to do so.

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The Rio Declaration (1992) includes many progressive principles, including the polluter-pays-principle (the polluter bears the costs of pollution) or the precautionary principle (carry out environmental assessments to identify adverse impacts and eliminate any potential harms from a project before it is started). It advocates that today's development shall not undermine the resource base of future generations and that developed countries bear a special responsibility due to the pressure their societies place on the global environment and the technologies and financial resources they command. These principles are all flouted in Order 81.

The 2001 International Treaty on Plant Genetic resources for Food and Agriculture (supported by the FAO and the Convention on Biological Diversity) acknowledges that plant genetic resources for food and agriculture are the raw material indispensable for crop genetic improvement, whether by means of farmers' selection, classical plant breeding or modern biotechnologies, and are essential in adapting to unpredictable environmental changes and future human needs; that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights; and that the rights recognized in this (the) Treaty to save, use, exchange and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at national and international levels. Order 81 is in clear violation of these principles.

Order 81 was supposedly drafted by the Coalition, and it supposedly represented the consensus view of the Coalition partners, including the UK and various other members of the EU. The Order extends the patenting of life forms into the area of crops and agriculture, in spite of a massive ethical debate about this within Europe. It also treats GM varieties as if they are no different from new "conventional" varieties, which is in clear contravention of EU policy. Those who drafted Order 81 were clearly happy to see the farmers of that blighted country blighted further by a "green light" for GM contamination of the food supply and by commercial enslavement.

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