

SAVING SEED UNDER INTERNATIONAL INTELLECTUAL PROPERTY TREATIES AND IRAQI PATENT LAW

LA REGULACIÓN DE LA RESERVA DE SEMILLAS PARA RESEMBRARLAS EN LOS TRATADOS INTERNACIONALES DE PROPIEDAD INDUSTRIAL Y EN LA LEGISLACIÓN IRAQUÍ DE PATENTES

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Abstract: This study analyses legal position of saving seeds in internal and international levels, for example the TRIPS Agreement and the UPOV Convention of 1991. In this context the study attempts to compare and analyse the latest regulations of saving seeds in Iraq to previous amendments carried out by Coalition Provisional Authority (CPA) and previous Iraqi governments and to the TRIPS Agreement. The study finds out that the Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties is an attempt to comply with the TRIPS Agreement by providing plant variety protection.

Keywords: Intellectual Property Law of Iraq, Saving Seeds, Plant Variety Protection, TRIPS Agreement, UPOV Convention of 1991.

Resumen: Este artículo analiza la regulación legal de la práctica de los agricultores consistente en conservar semillas de su propia producción para proceder a sembrarlas en el siguiente ciclo de cultivo. Se analiza la regulación en el ámbito nacional y en el internacional, incluyendo la contenida en el Acuerdo ADPIC y en el Convenio de la UPOV de 1991. En este contexto, el trabajo compara y analiza las últimas regulaciones al respecto en Irak (incluidas las modificaciones introducidas por la Autoridad Provisional de la Coalición Internacional y por el gobierno iraquí) con la regulación del Acuerdo ADPIC. El estudio concluye que la Ley Nº 15 de 2013 sobre Registro, Acreditación y Protección de Variedades Agrícolas es un intento de cumplir con el Acuerdo sobre los ADPIC al proporcionar protección de variedades vegetales.

Palabras clave: Legislación iraquí de propiedad intelectual e industrial, reserva de semillas, protección de variedades vegetales, Acuerdo sobre los ADPIC, Convenio de la UPOV de 1991.

Summary: I. Introduction. II. International treaties that regulate the protection of varieties and plants by means of industrial property rights. 1. The World Intellectual Property Organization. 2. International Treaty on Plant Genetic Resources for Food and Agriculture by Food and Agricultural Organization of the United Nations (Plant Treaty). 3. Convention on Biological Diversity (CBD). 4. The International Convention for the Protection of New Varieties of Plants (UPOV Convention) (Act of 1991). A) Compulsory Exception. B) Optional Exception. 5. Saving Seeds under TRIPS Agreement. A) Article 27 (3) (b) of the TRIPS Agreement. B) Sui Generis System. III. Saving Seed under Intellectual Property Laws of Iraq. 1. Law No. 50 of 2012 on Seeds and Seed Tubers. 2. The Intellectual Property Legislations. A) The situation before the Coalition Invasion. B) The amendments of Order 81/26 of CPA. a) Novelty: b) Distinctness: c) Uniformity: d) Stability: C) The Law No. 15 of 2013. IV. Conclusion.

Introduction

1. Saving seed can be defined as ‘the practice of saving seed yield from one harvest for future crop use’. Also, the Brown Bag Sale has been explained as it ‘occurs when farmers purchase seed from seed companies, plant the seed in their own field, harvest the crop, and then sell the reproduced seed to other farmers for them to plant as crop-seed on their own farms’.¹ Traditionally farmers in both developed and developing countries replanted, exchanged or sold seed from previous year production. However, under the patent system farmers are not allowed to sell grown seed as its common especially in the developed countries that crops annual purchase is a rule. But this practice still rare in the developing countries, instead of informal reuse, exchange or sell is a normal practice.²

2. There are some international treaties and organizations that govern the patents of plants and seeds. The important ones are The International Convention for the Protection of New Varieties of Plants (hereinafter the “UPOV Convention”) (Act of 1991), The World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter the “TRIPS Agreement”) (1995), The World Intellectual Property Organization (hereinafter the “WIPO”), International Treaty on Plant Genetic Resources for Food and Agriculture by Food and Agricultural Organization of the United Nations (hereinafter the “Plant Treaty”) (2001),³ and The Convention on Biological Diversity (hereinafter the “CBD”). Out of these international treaties, Iraq is a member of WIPO,⁴ and most recently on accessed and became one of the contracting parties of the Treaty on 27 November 2017.⁵ and is currently in the process of conceding TRIPS Agreement as well. The process of accession of Iraq to the TRIPS Agreement first initiated on 13 December 2004 and the working party met again for the second time in April 2008.⁶

3. Iraqi patent law is still in the process of evolution and not finalized yet. The first patent law in The Republic of Iraq was passed under the title of (The Patent Law and Industrial Design) Law No. 65 of 1970, which subsequently undergone many amendments. The first amendment was by Law No. 28 of 1999 and the second amendment implemented by Law No. 5 of 2002. However, after the invasion of Iraq by United States of America and Coalition partners, the Coalition Provisional Authority (hereinafter the “CPA”) under the ruler of Paul Bremer rewrote some of the laws of Iraq especially in the areas related to trade in general including the patent law. The CPA introduced the Order 81/26 on April 2004 under the title of (Patents, industrial design, undisclosed information, integrated circuits and plant variety Law).⁷ Then, this title became the new amended title to the Law No. 65 of 1970 (The Patent Law and Industrial Design) and introduced 22 amendments to the patent section. Order 81/26 also made some amendments in regard to plant variety by adding chapter Threequarter of Protection of New Plant Varieties which consists of 28 Articles. However, the Law No. 65 of 1970 amended in 2013 and chapter Threequarter removed entirely and was replaced by a new law under the name of Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties.⁸ The study will examine amendments in intellectual property laws of Iraq on saving seeds and whether they are compatible with international treaties or there are further steps necessary to take.

¹ K.T. CROSBY, ‘The United States and Iraq: Plant Patent Protection and Saving Seed’, *Washington University Global Studies Law Review*, 9.3 (2010), 511–34 (p. 511).

² *Commission on Intellectual Property Rights Final Report, Integrating Intellectual Property Rights and Development Policy* (London, September 2002), p. 58 <http://www.iprcommission.org/graphic/documents/final_report.htm> [accessed 21 September 2017].

³ K.T. CROSBY, pp. 514–22.

⁴ ‘Information by Country: Iraq’ <http://www.wipo.int/members/en/details.jsp?country_id=81> [accessed 31 July 2017].

⁵ ‘International Treaty on Plant Genetic Resources for Food and Agriculture, Official List of Contracting Parties Elaborated by the Legal Office of FAO’ <http://www.fao.org/fileadmin/user_upload/legal/docs/033s-e.pdf> [accessed 13 November 2017].

⁶ ‘WTO | Accession Status: Iraq’ <https://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm#status> [accessed 26 July 2017].

⁷ English version can be accessed through ‘Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law.’ <http://www.wipo.int/wipolex/ar/text.jsp?file_id=181090> [accessed 26 July 2017].

⁸ ‘Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties’ <http://www.iraq-ig-law.org/ar/webfm_send/1447> [accessed 8 October 2017].

II. International treaties that regulate the protection of varieties and plants by means of industrial property rights

1. The World Intellectual Property Organization

4. WIPO as an international organization always tried to create an international patent system and to provide some minimum protection standards. However, as an agent of United Nations, the influence of developing countries on WIPO has been great. The developing countries were continuously tried to increase the standard of transfer of technology in one hand, but when it comes to the scope of patentable subject matters, WIPO has not been favoured for the inclusion of plant varieties.⁹ The Paris Convention in which Iraq is a member country does not have any provision regarding the plant varieties.¹⁰ However, in Patent Law Treaty,¹¹ which was passed by WIPO ‘with the aim of harmonizing and streamlining formal procedures with respect to national and regional patent applications and patents and making such procedures more user friendly’,¹² Article 3 (1) (a) states that the provisions of Patent Law Treaty ‘shall apply to national and regional applications for patents for invention and for patents of addition’. In the Explanatory Notes on The Patent Law Treaty and Regulations Under The Patent Law Treaty, which are prepared by the International Bureau of the WIPO stated that if a plant is the result of a genetic engineering, then application for patents of such plants are allowed under the Patent Treaty Law.¹³ Even though Iraq is a member state of WIPO, but Iraq is not a contracting party to the Patent Treaty Law,¹⁴ therefore, not bound by the provisions of the Patent Treaty Law.

2. International Treaty on Plant Genetic Resources for Food and Agriculture by Food and Agricultural Organization of the United Nations (Plant Treaty)

5. The origin of the Plant Treaty goes back to the voluntary International Undertaking on the Plant Genetic Resources adopted by the Commission on Genetic Resources for Food and Agriculture in 1983. The international Undertaking’s objective was to ‘make plant genetic resources available for plant breeding, recognizing that they were a “heritage of mankind” and available to all’.¹⁵ Later on in 1996 the Global Plan of Action at the Leipzig International Technical Conference on Plant Genetic Resources adopted. All these works then adopted by the Commission on Genetic Resources for Food and Agriculture in 2001 as a legally binding international treaty and entered into force on 29 June 2004.¹⁶ The objectives of the Plant Treaty as stated in Article 1 are ‘the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use’. Farmers’ rights were considered key element during the adoption in 2001 of the Plant Treaty and entering into force of the Treaty in 2004.¹⁷ Article 9 of the Plant Treaty dedicated to the Farmers’ Rights and recognizes and justifies the rights that farmers have due to the ‘enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the

⁹ D.S. TILFORD, ‘Saving the Blueprints: The International Legal Regime for Plant Resources’, *Case Western Reserve Journal of International Law*, 30 (1998), 373 (pp. 405–6).

¹⁰ *Implications of the Trips Agreement on Treaties Administered by WIPO*, ed. by Organización Mundial da Propiedade Intelectual (Xenebra) (Genève: WIPO, 1997), p. 48.

¹¹ ‘Patent Law Treaty’ <<http://www.wipo.int/wipolex/en/details.jsp?id=12642>> [accessed 31 July 2017].

¹² ‘Patent Law Treaty (PLT)’ <<http://www.wipo.int/treaties/en/ip/plt/>> [accessed 31 July 2017].

¹³ ‘Explanatory Notes on The Patent Law Treaty And Regulations Under The Patent Law Treaty’, para. 3.03 <http://www.wipo.int/export/sites/www/treaties/en/ip/plt/pdf/plt_notes_pubxex.pdf> [accessed 31 July 2017].

¹⁴ ‘Patent Law Treaty (Geneva, 2000) Contracting Party Status on July 15, 2017’ <<http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/plt.pdf>> [accessed 31 July 2017].

¹⁵ C. LAWSON, ‘Implementing Farmers’ Rights: Finding Meaning and Purpose for the International Treaty on Plant Genetic Resources for Food and Agriculture Commitments?’, *European Intellectual Property Review (EIPR)*, 37.7 (2015), 442-54 (p. 443).

¹⁶ ‘Overview | International Treaty on Plant Genetic Resources for Food and Agriculture | Food and Agriculture Organization of the United Nations’ <<http://www.fao.org/plant-treaty/overview/en/>> [accessed 13 November 2017].

¹⁷ C. LAWSON, p. 442.

world.¹⁸ The Plant Treaty further stated that nothing in Article 9 under Farmers' Rights shall be interpreted in such a way as to limit the farmers' rights to save, use, exchange and sell farm-saved/propagating materials.¹⁹ It is clear that the Treaty doesn't want any contracting party to limit the farmers' rights which help and develop plant genetic resources as a production basis of foods and agriculture. However, it has to be taken into account that FAO does not address all the rights of the farmers, for example the rights of those farmers in regard of those plant varieties commercialised from their farm germ plasm.²⁰ The Plant Treaty also does not provide for intellectual property rights.²¹ Currently Iraq is one of the contracting parties as accessed the Treaty on 29 August 2014 and entered into force on 27 November 2014.²² The entry into force of the Treaty is one year after the last amendment of the Law No. 65 of 1970 in 2013 and enacting Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties.

6. However, as stated in the preamble of the Plant Treaty that 'Affirming that nothing in this Treaty shall be interpreted as implying in any way a change in the rights and obligations of the Contracting Parties under other international agreements; Understanding that the above recital is not intended to create a hierarchy between this Treaty and other international agreements'. The language of the preamble is clear enough that contracting parties cannot escape any obligations they have under other international agreements, even though they have joined them later than the Plant Treaty.²³ This means that even if Iraq in the future will join the TRIPS Agreement, yet it still has to comply with the high standard of intellectual property rights that the TRIPS Agreement provided for, especially in the area of patent and breeders' rights, even though Iraq is one of the contracting parties of the Pant Treaty.

3. Convention on Biological Diversity (CBD)

7. The United Nations Environment Programme (hereinafter "UNEP") responded to the wide spread acknowledgment of importance of biological diversity to present and future generations, and to threats to species and ecosystems caused by human activities, by establishing some Ad Hoc Working Groups that started from 1988 to 1991, and by 1992 they agreed on the final version of the text which they have provided and the CBD came into existence. The Ad Hoc Working Group while discussing the creation of a legal text, they had to take into consideration 'the need to share costs and benefits between developed and developing countries as well as ways and means to support innovation by local people.'²⁴ The CBD is an attempt for creating an international regulation for the purpose of conservation and utilization of biological resources. The CBD recognizing that the genetic resources and crop diversities are centred in less developed countries. However, the language of the CBD is considered vague language because the CBD tried to satisfy the needs of all. For that reason, the CBD contains provisions for the protection of Intellectual Property rights, transfer of technology, and accesses to genetic resources and results and benefits that arise from biotechnologies, which should all be based on mutually greed terms by both developed and developing countries. These are the outcome of the political deal that brought the CBD into existence.²⁵

8. Genetic resources are defined as 'genetic materials of actual or potential value' which refers to any 'any material of plant, animal, microbiological or other origin containing functional units if he-

¹⁸ *International Treaty on Plant Genetic Resources for Food and Agriculture*, 2004, Article 9.1 <<http://www.fao.org/3/a-i0510e.pdf>> [accessed 14 November 2017].

¹⁹ *International Treaty on Plant Genetic Resources for Food and Agriculture*, Article 9.3.

²⁰ M. BLAKENEY, 'Protection of Plant Varieties and Farmers' Rights', *European Intellectual Property Review (EIPR)*, 24.1 (2002), 9-19 (p. 12).

²¹ N.P. DE CARVALHO, *The TRIPS Regime of Patents and Test Data*, Fourth edition (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2014), p. 353.

²² 'International Treaty on Plant Genetic Resources for Food and Agriculture, Official List of Contracting Parties Elaborated by the Legal Office of FAO'.

²³ C. LAWSON, p. 447.

²⁴ 'History of the Convention on Biological Diversity, Introduction' <<https://www.cbd.int/history/>> [accessed 18 November 2017].

²⁵ M. BLAKENEY, p. 14.

redity' as defined by Article 2 of the CBD. Therefore, seeds, cuttings and even DNA of the plants are all covered within the scope of the CBD. In principle the CBD is a convention mainly concerned with the farmers' rights. Hence many developing countries tried to incorporate as many provisions as possible into the TRIPS Agreement. Because TRIPS Agreement is part of the package of WTO and any country (whether it is a developed or less developed) wishes to join the WTO has to incorporate the TRIPS Agreement and comply with all its provisions. As some developed countries like the United States of America not ratified the CBD. The important provisions of the CBD that of the farmers' rights inserted into the TRIPS Agreement are only those apparent in Article 27 of the TRIPS Agreement which is related to patents and in particular Article 27 (3) which every member country has to provide some sort of protection of plant varieties whether through a patent or sui generis system or both.²⁶ Enforcement of other provisions of the CBD through the TRIPS Agreement is opposed by some developed countries such as United States of America, Japan and Switzerland.²⁷

9. Iraq has acceded to the CBD in 2009.²⁸ However, implementation of the CBD has considered by some policy makers and members of civil society to cause some conflicts with implementation of the TRIPS Agreement when in future Iraq becomes party to the TRIPS Agreement. According to them in the TRIPS Agreement interest of private commerce is placed above the interest of public and reduced other objectives of public policy.²⁹ On the contrary to that opinion some others are of the belief that contracting parties can implement both of the CBD and TRIPS Agreement without any conflict and in fact it is what expected from them to do. Since this is the normal principle of international law that countries are members of different bilateral and multilateral agreements and they are in fact implementing all these agreements in the same time, in a manner that does not cause any conflict and they considered to perform their obligations.³⁰

4. The International Convention for the Protection of New Varieties of Plants (UPOV Convention) (Act of 1991)

10. The UPOV Convention was first drafted in 1961 and came into force in 1968 when the United Kingdom, the Netherlands and Germany, as first countries ratified the UPOV Convention. The UPOV Convention has undergone three revisions in 1972, 1978 and 1991.³¹ These revisions were not in favour of seed users and farmers, but were in favour of the corporate breeders. Initially the UPOV Convention of 1991 had limited members, but after the TRIPS Agreement obliged that every member country should have an intellectual property rights for the protection of plant varieties, and also through the trade agreements between some developed and non-industrial less developed countries, members of the UPOV Convention has increased.³²

11. The UPOV Convention is considered as a sui generis form of intellectual property protection³³ that includes the rights of plant breeders and intellectual property rights of plant varieties.³⁴

²⁶ M. BLAKENEY, pp. 14–15.

²⁷ *Resource Book on TRIPS and Development*, ed. by United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development (Cambridge ; New York: Cambridge University Press, 2005), p. 398.

²⁸ 'Convention on Biological Diversity, Iraq - Country Profiles' <<https://www.cbd.int/countries/default.shtml?country=iq>> [accessed 21 November 2017].

²⁹ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, pp. 404–5.

³⁰ N.P. DE CARVALHO, p. 350.

³¹ 'UPOV Lex' <http://www.upov.int/upovlex/en/upov_convention.html> [accessed 21 November 2017].

³² 'GRAIN – UPOV 91 and Other Seed Laws: A Basic Primer on How Companies Intend to Control and Monopolise Seeds', 2015, p. 4 <<https://www.grain.org/article/entries/5314-upov-91-and-other-seed-laws-a-basic-primer-on-how-companies-intend-to-control-and-monopolise-seeds>> [accessed 21 November 2017].

³³ R. JORDENS, 'Progress of Plant Variety Protection Based on the International Convention for the Protection of New Varieties of Plants (UPOV Convention)', *World Patent Information*, 27.3 (2005), 232–43 (p. 232).

³⁴ P. BRAHMI AND V. CHAUDHARY, 'Protection of Plant Varieties: Systems across Countries', *Plant Genetic Resources*, 9.3 (2011), 392–403 (p. 392).

Even though Article 27 (3) (b) of the TRIPS Agreement only mentioned the word ‘sui generis’ without anything about the UPOV Convention, however majority member countries of the TRIPS Agreement, while implementing the requirement of having intellectual property protection of plant varieties, they incorporate the UPOV Convention into their legal system.³⁵

12. Although the rights of the farmers and seed savers after every revision of the UPOV Convention were narrowed and the rights of the corporate breeders strengthened further.³⁶ After every revision, duration of protection increased as well. In the previous Act of 1978 the duration of protection was 18 for trees and vines, and 15 for other plants. However, in the current UPOV Convention of 1991 the minimum duration of protection as stated in Article 19 is 25 years for trees and vines, and 20 years for other plants from the date of granting protection. However, the UPOV Convention of 1991 provides for some exceptions to the Breeder’s right, which some of them categorised as compulsory exceptions under Article 15 (1) and the other as optional exception which provided in Article 15 (2) of Act 1991 of the UPOV Convention. The optional exception is new and allows farmers to save seeds under certain conditions in such a way that interest of the breeder is not undermined.³⁷

a) Compulsory Exception

13. Article 15 (1) of the UPOV Convention of 1991 provided some compulsory exception and the first of such exceptions is ‘acts done privately and for non-commercial purposes.’ This means that the act has to be done for private purposes and at the same time for non-commercial purposes. If one of these two elements is not available the exception does not apply. For example, if seeds of protected variety are saved by a farmer in his own farm but used for commercial purposes, then the exception does not apply and authorisation from the breeder is required. However, if the same seeds are to be used in his own gardens without sharing them with others or the farmer use the production of the protected seeds only for consumption by himself, his families and those dependents on him for living such as subsistence farming, then these acts will fall within the scope of Article 15 (1) (i) in which breeder’s authorisation is not required.³⁸

14. The second compulsory exception is provided for under Article 15 (1) (ii) are ‘acts done for experimental purposes’. This simply includes all acts done by any one for the experimental purposes, and it’s called ‘research exemption’³⁹. The third and last compulsory exceptions to the breeder’s right is ‘acts done for the purpose of breeding other varieties’ unless it is ‘essentially derived from the protected varieties, not clearly distinguishable from the protected variety or its production requires the repeated use of the protected variety’, as stated in Article 14(5). The second part of the third compulsory exception is ‘acts referred to in Article 14 (1) to (4) in respect of such other varieties’, which they are (multiplication, conditioning, offering, marketing, etc). The third compulsory exception also called ‘breeder’s exemption’.⁴⁰

b) Optional Exception

15. The UPOV Convention of 1991 named Article 15 (2) an optional exception, and also the text of the provision with the phrase of ‘each Contracting Party may’ clearly suggests that it is an optional

³⁵ R. JORDENS, p. 239.

³⁶ ‘GRAIN – UPOV 91 and Other Seed Laws: A Basic Primer on How Companies Intend to Control and Monopolise Seeds’, p. 4.

³⁷ R. JORDENS, p. 235.

³⁸ *Explanatory Notes on Exceptions to The Breeder’s Right Under the 1991 Act of the UPOV Convention*, 22 October 2009, p. 5 <http://www.upov.int/edocs/expndocs/en/upov_exn_exc.pdf> [accessed 21 November 2017].

³⁹ D.J. JEFFERSON, A.B. CAMACHO, AND C.L. CHI-HAM, ‘Towards a Balanced Regime of Intellectual Property Rights for Agricultural Innovations’, *Journal of Intellectual Property Rights*, 19 (2014), 395-403 (p. 398).

⁴⁰ M. THIELE-WITTIG AND P. CLAUS, ‘Plant Variety protection - A Fascinating Subject’, *World Patent Information*, 25.3 (2003), 243–50 (p. 246); *Explanatory Notes on Exceptions to The Breeder’s Right Under the 1991 Act of the UPOV Convention*, p. 6. and implementation of, plant variety protection under Union pour la protection des obtentions végétales (UPOV

provision. Therefore, the contracting parties have choice to implement it or not, and if decided to adopt the optional exception, then farmers are allowed to use the product (seed) of their harvest for propagating purposes. However, the product has to be obtained by planting on their own holding (Article 15 (2)). The Diplomatic Conference of 1991 of the UPOV Convention limited the saving seed practice to those seeds that only considered as a common practice on the land of the Contracting Party. In the Diplomatic Conference was of the opinion that this provision cannot be presented as a ‘farmer’s privilege’ and cannot be extended to areas of agricultural or horticultural production in which replanting saving seeds are not common practice. This means that other areas in which the production of the harvest is not used for replanting as a common practice such as production of fruits, ornamentals and vegetables, cannot be covered by the optional exception of the UPOV Convention.⁴¹

16. The phrase of ‘within reasonable limits and subject to the safeguard of the legitimate interests of the breeder’ is a requirement that all member countries have to take into consideration while implementing the optional exception. Even though inclusion of the optional exception into the UPOV Convention of 1991 is recognition of saving seed practice by some countries, but the process has to be applied on a crop by crop basis according to the member country in such a way that does not prejudice the legitimate interests of the breeder and does not weaken the objectives and incentives that provided by the UPOV Convention.⁴² The purpose of all these exceptions in general is creating a balance between rewarding innovations in plant varieties and use of these protected innovations for benefits of society as a whole.⁴³ This will certainly depend on each member state individually and during implementing this provision the concerned member state has to consider all relevant factors in order to arrive to such balanced legislation of plant variety protection. Iraq currently is not one of the Members of UPOV, however when expressed an interest of becoming Member of UPOV and participate in the sessions of the Council, Iraq accepted by the Office of the Union to be an observer of the Council of the UPOV.⁴⁴

5. Saving Seeds under TRIPS Agreement

17. TRIPS Agreement is considered unique in nature as it includes minimum standard of patentable objects. Before TRIPS Agreement patent principles regulated by Paris Convention, as it allowed states liberally to exclude from patentability. Article 27 of the TRIPS Agreement is considered one important Articles of the TRIPS Agreement as it regulates the patent. The subject of patent is a commercial subject and highly affecting the livelihood of all the members and in particular the less developed countries. In general, Article 27 of the agreement requires the Member countries to grant patent if the conditions of paragraph 1 met and not lawfully excluded from patentability according to paragraphs 2 and 3 of Article 27. Even though Article 27 should provide for minimum standard of protection rights but paragraph 1 stated that ‘patents shall be available for any inventions, whether products or processes’, which is considered as a very high standard of protection. This part of paragraph 1 directed to the developing countries as it was practice of many of them to exclude patentability of many areas though the general conditions of being ‘new, involve an inventive step and are capable of industrial application’ were available. Therefore, developing countries should provide for patents for all the areas unless it’s provided for exclusions under paragraphs of 2 and 3.⁴⁵

18. The generality of Article 27 (1) of the TRIPS Agreement caused some disagreement among member countries. One of the controversial areas that includes in Article 27 (1) is biotechnology related

⁴¹ *Explanatory Notes on Exceptions to The Breeder’s Right Under the 1991 Act of the UPOV Convention*, pp. 8–9.

⁴² R. JÖRDENS AND P. BUTTON, ‘Effective System of Plant Variety Protection in Responding to Challenges of a Changing World: UPOV Perspective’, *Journal of Intellectual Property Rights*, 16 (2011), 74–83 (p. 77).

⁴³ D.J. JEFFERSON, A.B. CAMACHO, AND C.L. CHI-HAM, p. 398.

⁴⁴ ‘UPOV Observers’ <<http://www.upov.int/members/en/observers.html>> [accessed 25 November 2017]; ‘Rules Governing the Granting of Observer Status to States, Intergovernmental Organizations and International Non-Governmental Organizations in UPOV Bodies’ <http://www.upov.int/edocs/infdocs/en/upov_inf_19.pdf> [accessed 25 November 2017].

⁴⁵ P.T. STOLL, J. BUSCHE, AND K. AREND, *WTO: Trade-Related Aspects of Intellectual Property Rights* (BRILL, 2009), p. 470 - 471.

inventions. TRIPS Agreement does not provide any rules to regulate biotechnology related inventions. However, Article 27 (3) (b) which is an exception clause stated that the members are allowed to exclude from patentability plants and animals. Also, Article 27 (2) provides for very general exceptions on the ground of ordre public and morality, which can be relied on in cases where members could not avoid patentability on bases of Article 27 (3).⁴⁶

A) Article 27 (3) (b) of the TRIPS Agreement

19. The provision of Article 27 (3) (b) is a complex provision and it reflects the position of most of the developing countries and some developed countries as well. The developing countries during the time of Uruguay Round (during the negotiation of the TRIPS Agreement) were not experienced enough to evaluate any provisions related to the field of biotechnology. Furthermore, some developed countries such as Canada was reluctant to submit to full patentability according to Article 27 (3) (b), as there was a debate at national level whether to accept the patentability of higher life forms. Therefore, during the Uruguay Round Canada was reluctant to accept the patentability of higher life forms in Article 27 (3) (b).⁴⁷ Since the TRIPS Agreement has come into existence the differences among developed countries reduced but not eliminated as to what should be patented and excluded from patentability. In the United States of America plant varieties and animal races are subject to protection while in Europe they are not.⁴⁸ The origin of patentability of living things is relatively new in developed countries, as it traces back to 1930s in the United States of America and as for the plant varieties and breeders' rights it started to exist in second half of the twentieth century.⁴⁹

20. Article 27 (3) (b) allows the patentability of micro-organism, micro-biological processes for the production of plants and animals, and non-biological processes for the productions of plants and animals. However, members are allowed to exclude from patentability 'whole animal (including, obviously, human beings), animal varieties and parts of animals (including parts of human beings); whole plants and plant varieties (provided an alternative system of protection is provided) and parts of plants; and essentially biological process.'⁵⁰ Article 27 (3) (b) gives some flexibilities for protection of plant varieties, however, the provision enforces the member countries to provide some form of protection through patent or any form of sui generis. This causes problems to the developing countries as most of them never have any form of protection to the plant varieties and this caused concern for them as any form of protection will have huge impact on their farming practices especially in the area of seed saving and exchanging, genetic diversity and food security. For that reason, during the negotiations most of the developing countries backed up by European Community countries rejected the proposal forwarded by the United States, Japan, the Nordic countries and Switzerland. They proposed that plants and living organisms to be widely covered and protected by patent.⁵¹

21. A question may arise here: what is Plant variety? Since the TRIPS Agreement does not provide a definition for it. However, in order to understand what Plant Variety is one can look at other conventions such as the UPOV convention and also more clear definition can be found in a ruling of European Patent Office in 1995 of (*Greenpeace v Plant Genetic Systems NV*) by refereeing to the UPOV Convention as well. The Technical Board of Appeal of the European Patent Office in the Reasons for the Decision stated that plant varieties as a concept refers to:

⁴⁶ P.T. STOLL, J. BUSCHE, AND K. AREND, pp. 481–82.

⁴⁷ N.P. DE CARVALHO, p. 322.

⁴⁸ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, p. 388.

⁴⁹ *Commission on Intellectual Property Rights Final Report, Integrating Intellectual Property Rights and Development Policy*, p. 58.

⁵⁰ N.P. DE CARVALHO, p. 323.

⁵¹ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, p. 390-391.

‘any plant grouping within a single botanical taxon of the lowest-known rank which, irrespective of whether it would be eligible for protection under the UPOV Convention, is characterised by at least one single transmissible characteristic distinguishing it from other plant groupings and which is sufficiently homogeneous and stable in its relevant characteristics’⁵²

22. Even though Article 27 (3) (b) permits member countries to exclude from patentability plant varieties including hybrids, plant cells, seeds and other plant materials, but they should provide some type of protection through patents, sui generis or a combination of both. Under this provision it is stated that the sui generis has to be an effective sui generis in protecting the plant varieties, therefore the content and scope of the system is left to the discretion of the member countries to choose. Again, this flexibility and choice is due to the disagreement among the industrialized countries, as in USA, Japan and Australia patenting of plant varieties were allowed but this is not the case in Europe.⁵³

B) Sui Generis System

23. The system of sui generis for protecting the plant varieties is not new. During 1920s and 1930s some countries introduced a protection system different from patent protection for the purpose of breeders’ rights and called it sui generis system. Breeders’ rights also rely on features such as new, distinct, uniform and stable in order to protect the plant varieties. Under the breeders’ rights the specific and existing plant variety will be protected and allows the farmers to re-use the seeds obtained by their own and the protected variety can be used in extra breeding without permission from the title holder and this called the (Breeders’ exemption). The sui generis system spread around world and adopted by many countries especially when the UPOV Convention adopted during 1960s.⁵⁴ The UPOV Convention described as an inbuilt balance which not only allows farmers to save seeds for future uses, but farmers allowed to use new varieties a couple of times on his own farm for the purpose of multiplication. The UPOV Convention is very useful for the researchers as it allows the protected varieties to be used for new selections.⁵⁵ Article 15 (1) (ii) of the UPOV Convention of 1991 is dedicated for one of the compulsory exceptions to the Breeder’s Right, in which stated that breeder’s right shall not extend to ‘acts done for experimental purposes’.

24. Although the developed countries possess most of the industrial technologies in the area of biotechnology, the vast majority of the biodiversity exists in the developing countries, which can be considered as the source of current developments. However, only the developing countries mostly affected (negatively) by the strong patent system. Usually developing countries’ fears arise when the patent or any intellectual property right system prevent small scale and medium scale farmers and breeders from re-using the saved seeds as their traditional practice in developing countries. Also relying on small numbers of protected seeds may eliminate the varieties of existing seeds and affect the biodiversity of the land. Patenting some types of genes and plant varieties that are necessary for surviving some developing countries, reduce the chances of further research and breeding when necessity required doing so.⁵⁶

⁵² European Patent Office, ‘T 0356/93 (Plant Cells) of 21.2.1995’, para. 23 <<https://www.epo.org/law-practice/case-law-appeals/recent/t930356ex1.html>> [accessed 3 October 2017].

⁵³ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, p. 392-394.

⁵⁴ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, pp. 394-95.

⁵⁵ K. DOGBEVI, *The Sui Generis System of Plant Variety Protection Under the TRIPS Agreement: An Empty Promise for Developing Countries* (Rochester, NY: Social Science Research Network, 1 April 2017), p. 30 <<https://papers.ssrn.com/abstract=2961801>> [accessed 18 September 2017].

⁵⁶ United Nations Conference on Trade and Development, International Centre for Trade and Sustainable Development, and UNCTAD-ICTSD Project on IPRs and Sustainable Development, p. 410.

II. Saving Seed under Intellectual Property Laws of Iraq

1. Law No. 50 of 2012 on Seeds and Seed Tubers

25. The Iraqi government recognized the importance of seed to the country since 1927, the year in which legislation was passed by in order to enhance the production of cotton through improved seed. The latest attempt by Saddam's Regime was in 1995 when National Seed Board (hereinafter 'NSB') was established and chaired by the Ministry of Agriculture. Under the NSB many research centres established for the purpose of seed production and supply among others.⁵⁷ The current governing system which is considered a democratic system of government tries its best to align its laws with international laws. Therefore it has passed some laws such as Law No. 50 of 2012 on Seeds and Seed Tubers, which is a new attempt to organize and encourage seed production in both public and private sectors.⁵⁸ Under this law, section 2 states the aims of the Law and in subsection two states that the second aim of this law is to 'guarantee the registration, accreditation and protection of new agricultural varieties that bred by researcher of Republic of Iraq, including those varieties that previously registered and accredited, and to provide enough quantities to be given to farmers in suitable times, prices and locations, and to ensure special procedures to authenticate the seeds and related matters'. The Law guarantees the registration, accreditation and protection of new agricultural varieties bred by Iraqi researchers including those varieties that previously registered and accredited. Section 2 of the Law states the aim of the Law which primarily emphasizes on the varieties and seeds bred by Iraqi researchers and breeders without reference to varieties propagated outside Iraq as stated in Section 2.

26. However, chapter five of the Law deals with Trade of Seeds and Seed Tubers, consists of sections of 18 to 30, regulate trade and exchange of seeds and seed tubers that are produced, imported or exported. These sections give rights to producers, importers and exporters of seeds and seed tubers to apply for licence to produce, import or export seeds and seed tubers. This clearly gives rights of foreign and outside seeds and seed tubers to be registered, accredited and protected by Iraqi government. In the final step, the National Seed Board after getting recommendation from the competent authority⁵⁹ will grant approval to licence, and can be renewed every three years.⁶⁰ This shows that this law encourages exchange of seeds and seed tubers and allow introducing foreign seeds into Iraqi market, without stating the protection duration. However, there are some conditions that have to be met before granting the licence of importing and releasing foreign seeds into Iraq. Section 18 The Law No. 50 of 2012 on Seeds and Seed Tubers, states that application has to be made to the competent authority to get a licence, and sample has to be submitted for lab inspection before NSB grants permission. There is a book guidance of official varieties that all accredited and registered varieties recorded in order to be qualified to the program of seed authentication (verification).⁶¹ The importer and imported foreign seeds and seed tubers has to comply with the conditions stated by the law No. 50 of 2012. For example, the importer should have a valid licence in order to import. The type, varieties and country of origin has to be fixed on the licence or permission papers that issued from official authority that recognized by the competent authority. The importer has to notify the NSB on any genetic alteration and the nature of the alteration. The imported seeds and seed tubers should have been tested by the International Seed Testing Association (hereinafter the 'ISTA') or other international testing rules that verify the seeds authentication according to the laws of the country of origin, however, the system of authentication of the country of origin has been recognized by the Ministry (Ministry of Agriculture).⁶² Also, the imported seeds and seed tubers have to be

⁵⁷ A.I. ABBAS, *Focus on Seed Programs The Seed Industry in Iraq* (WANA Seed Netwok, 2001), pp. 2-3 <<https://www.seedquest.com/statistics/pdf/Iraq2001.pdf>> [accessed 7 October 2017].

⁵⁸ Law No. 50 of 2012 on Seeds and Seed Tubers, sec. 2 (1) <<http://extwprlegs1.fao.org/docs/pdf/irq145545.pdf>> [accessed 8 October 2017].

⁵⁹ The Competent Authority is defined by sec. 1 (14) of the Law No. 50 of 2012 on Seeds and Seed Tubers, as General Commission for Seed Inspection and Authentication.

⁶⁰ 'Law No. 50 of 2012 on Seeds and Seed Tubers', sec. 20 (1).

⁶¹ 'Law No. 50 of 2012 on Seeds and Seed Tubers', sec. 8.

⁶² 'Law No. 50 of 2012 on Seeds and Seed Tubers', sec. 1 (1).

from varieties available and relied on in Iraq. Even though the Minister of Agriculture has authority in emergency situations and on suggestion by the NSB to allow the importation of limited seeds for limited period from varieties that are not relied nor accredited in Iraq but has been accredited in the country of origin with the condition that has similar agricultural environment to Iraq. If these conditions are not met the imported seeds and seed tubers have to be returned or destroyed, with exception to small quantities that can be kept for research purposes.⁶³

27. The Law No. 50 of 2012 on Seeds and Seed Tubers regulate and encourage trades of local and foreign seeds. However, it does not protect the seeds and seed varieties in the sense of intellectual property protections that exist within patents and other sui generis systems. Therefore, it cannot be considered as an active sui generis system that required by Article 27 (3) (b) of the TRIPS agreement.

2. The Intellectual Property Legislations

A) The situation before the Coalition Invasion

28. According to the document published by the FAO in 2015, Iraq as a whole is going through series of political, infrastructural and economic crises. These crises affected many areas of Iraqis' livelihoods including the agricultural sector and food production. After the 2003 invasion, FAO realised the disasters that happened to Iraq's bank seed, therefore started helping government in rebuilding seed industry.⁶⁴ Focusing on Iraq's agriculture is essential for the Iraqi people as it is one thing that they can always rely on in this uncertainty of the political future of the country. Flourishing the agricultural sector will always be a good answer to address the food security.⁶⁵

29. Historically, Iraq is considered as a land of agriculture by virtue of the rivers of Tigris and Euphrates and their tributaries. This fertile soil made Iraq cradle land of some of the oldest great civilizations, and 'Iraq is an important primary and secondary centre of domestication for many crops such as wheat, barley, lentil, chickpea and medics... Cereal production occupies about 95% of the arable land.'⁶⁶ However, the original un-amended Patent Law which was introduced in 1970 (Law No. 65 of 1970) did not contain any rules to regulate the plant varieties. To illustrate that, section 3 of this law was allocated to subject matters or areas which cannot be patented did not contain any regulations in regard to livings whether animals, plants or anything related to them. This shows that before the invasion of Iraq, the Iraqi Government did not want to patent any living matters or process in this regard. Even after the 2003 invasion when Order 81/26 of 2004 was introduced by the CPA (which amended the first Patent law of 1970), yet section 3 does not contain any regulation in this regard. However, the Order 81/26 inserted a new chapter for protecting the plant varieties. After the invasion ended and after a few set of elections, the new parliament and the new government decided that the chapter for plant varieties protection should be repealed and replaced by a new Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties.

B) The amendments of Order 81/26 of CPA

30. CPA took upon itself the responsibilities to rebuild Iraq in every way including the legal system. The CPA administrator L. Paul Bremer III, through a series of Orders introduced many new rules and regulations to many areas of Iraqi Laws, including the intellectual property laws of Iraq. Through these changes the CPA wanted to elevate the position of Iraq to the required international standard both

⁶³ 'Law No. 50 of 2012 on Seeds and Seed Tubers', secs 24–27.

⁶⁴ FAO, 'Iraq and FAO, Advancing Agricultural Technologies for Food Security and Resilience' (FAO, 2015), pp. 1–2 <www.fao.org/3/a-au080e.pdf>.

⁶⁵ K.T. CROSBY, p. 527.

⁶⁶ A.I. ABBAS, p. 1.

economically and politically.⁶⁷ One of the Orders was the Order 81/26 of the CPA which added chapter Threequarter (consists of 28 Articles) of Protection of New Plant Varieties and revolutionised the intellectual property protection as it is the first of kind in Iraq's Intellectual Property Laws. In its preamble the Order stated that the CPA to enhance the economic condition of the people of Iraq through important changes to the Iraqi intellectual property system. One of the significant changes was an addition and for the first time explicitly new plant varieties (livings) protected with a specific duration of time and the law provides punishment for its infringement. Article 1 of the Order defined the word variety as:

‘Any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder's right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged’⁶⁸

31. However, when comparing this definition with the one provided by the UPOV Convention of 1991 in its Article 1 (vi) it shows that both of the definitions are same. This means that the Order copied the definition of variety from the UPOV Convention word by word. When it comes to the criteria of registration, the Order required the same criteria as those of the UPOV Convention of 1991. The plant variety has to be novel, distinctive, uniform and stable, in order to be registered and protected by the Order.⁶⁹

a) Novelty

32. The criterion of novelty as requested by the Order require that the variety propagating and harvesting has not being sold or transferred with the consent of the breeder for more than one year inside Iraq and for more than four years outside Iraq, but six years outside Iraq if related to trees and vines, at the date of filing the registration or at the date of priority provided for in Article 8 (A) of chapter three-quarter. According to Article 8 (A) of chapter three-quarter the applicant permitted to apply for right of priority within twelve months following the first registration. This right of priority is valid in all member countries of the WTO or other international agreement in this area in which Iraq is a member. This right of priority is also taken from Article 11 of the UPOV Convention of 1991. However, as mentioned earlier the fact is that Iraq up to this moment is not a member country of WTO. Thus, there was no reason for CPA to grand this favour to an organization (Member States) that cannot return back the favour in the same way. This was particularly right when Iraq was under occupation and was in need of favour from developed and even stabled developing countries.

b) Distinctness

33. The requirement of distinctness of the variety is considered as a second criterion for granting protection to the new variety by Article 4 (B) of the Order. The new variety has to be clearly distinguishable from any other variety which considered a common knowledge. Any variety has been applied for granting intellectual property protection or for entering in the Register, will be considered as common knowledge if this process occurred before filing the application for new variety.⁷⁰ This article again is

⁶⁷ E.M. AL-DAJANI, ‘Post Saddam Restructuring of Intellectual Property Rights in Iraq Through a Case Study of Current Intellectual Property Practices in Lebanon, Egypt, and Jordan, *The John Marshall Review of Intellectual Property Law*, 6.2 (2007) 250-271, pp. 250–5.

⁶⁸ ‘Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law.’, Article 1 <http://www.wipo.int/wipolex/en/text.jsp?file_id=181090> [accessed 10 October 2017].

⁶⁹ ‘Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law.’, p. Chapter Threequarter, Article 4.10,10]]}, "locator": "Chapter Threequarter, Article 4", "label": "page"}], "schema": "https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}]

⁷⁰ ‘Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law.’, chap. Threequarter, 4 (B).10,10]]}, "locator": "Threequarter, 4 (B

the exactly worded as written in Article 7 of the UPOV Convention of 1991 and has the same criterion of distinctness.

c) Uniformity

34. The third criterion for a variety to be considered as a new variety is uniformity. Article 4 (C) of the Order requires the new variety has possessed adequate uniformity in its relevant characteristics. The Order stated that new variety acquire the uniformity criterion ‘if it is uniform subject to the variation that may be expected from the particular features of its propagation’.

d) Stability

35. The fourth requirement of new variety is stability as stated by Article 4 (D) of the Order. The stability acquired when the relevant characteristics of the new variety remain unchanged after repeated propagation or in the case of a particular cycle of propagation, at the end of each such cycle. The third and fourth criteria are also taken from the Articles of 8 and 9 of the UPOV Convention of 1991.

36. Another important element from the Order which is exactly taken from the UPOV Convention of 1991 is the duration of the breeder’s right. Article 17 of chapter threequarter of the Order stated that duration for protecting the new variety shall be twenty years from the date of filing the application. However, the protection period of trees and vines shall be twenty five years.

C) The Law No. 15 of 2013

37. Sui generis system has a strong point in which provides for rights of both breeders and farmers in well balanced and equitable system. The Order also provides for the rights of breeder as it is stated in the UPOV Convention of 1991. However, one of the crucial area for every country is the farmer’s right, especially for the developing countries. The UPOV Convention of 1991 provides some exceptions to the breeder’s right in uses of new and protected variety for private and non-commercial purposes, experimental purposes and breeding other varieties with some exceptions. Another important exception to the breeder’s right which is in favour of farmers in the way that developing countries, those countries in which their economy heavily rely on small farmers can benefit from this optional exception as stated by the UPOV Convention of 1991:

‘[Optional exception] Notwithstanding Article 14, each Contracting Party may, within reasonable limits and subject to the safeguarding of the legitimate interests of the breeder, restrict the breeder’s right in relation to any variety in order to permit farmers to use for propagating purposes, on their own holdings, the product of the harvest which they have obtained by planting, on their own holdings, the protected variety or a variety covered by Article 14 (5)(a)(i) or (ii).’⁷¹

38. This exception was not taken into consideration by the CPA in Iraq while they had seen the situation of the fields and seed bank of Iraq which was destroyed by the invasion war.⁷² Contrary to that the Order completely prohibited the farmers from ‘re-using seeds of protected varieties or any varieties mentioned in items 1 and 2 of paragraph (C) of Article 14 of this Chapter.’⁷³ This provision was in fact taken from the United States of American Patent Act, as the courts in USA interpreted the Act in companies’ interest and prevent farmers from saving, reuse, or resale protected seeds.⁷⁴ This shows that in

⁷¹ ‘International Convention For The Protection Of New Varieties Of Plants. Act of 1991’, Article 12 (2) <<http://www.upov.int/export/sites/upov/upovlex/en/conventions/1991/pdf/act1991.pdf>> [accessed 9 October 2017].

⁷² E. FINKEL, ‘Scientists Seek Easier Access to Seed Banks’, *Science*, 324.5933 (2009), 1376–1376 (p. 1376).

⁷³ ‘Order No. 81 Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law.’, Chapter Threequarter, Article 15 (B).10,10]]}, "locator": "Chapter Threequarter, Article 15 (B

⁷⁴ K.T. Crosby, p. 511.

some situations the Order failed to follow the UPOV Convention of 1991 and regulate laws that are in best interest of Iraqi farmers.

39. It is worth mentioning that the Law No. 15 of 2013 on Registration, Accreditation and Protection of Agricultural Varieties replaced the Order and regulated the protection of new varieties in different way. The Law No. 15 of 2013 consists of 20 sections only and without giving details on some issues. The criteria of protection of new varieties stated in section 3 are without dedicating any special subsection to each criterion and without defining them. Section 3 (3) of the Law stated that new variety, hybrid or progeny in order to be registered or accredited should have the stability, uniformity, distinctiveness characteristics, and have high genetic value and agricultural addition or new industrial application. These criteria should have been explained and defined as any other important legal terms. Every important legal term needs to be clarified in order to avoid misinterpretations. The rest of the section which consists of nine subsections is merely technical requirements for registration and accreditation.

40. Apart from that the Law No. 15 of 2013 provides for the breeder's rights in detail as well. However, the Law provides extra exception than the one provided by the Order. Section 12 (1) of the law states that the breeder's right shall not include acts by individual or companies whether private or public, or other public-sector bodies for personal un-commercial purposes or for experimental purposes or for breeding another new variety or hybrid. Section 16 (1) authorising minister on recommendation from the committee⁷⁵ to grant licence to others with the permission of the breeder of using the protected variety, hybrid or progeny if public interest required that. In this case the breeder will be awarded equitable monetary compensation in which the financial value of the licence has been taken into consideration by the neutral committee established for this purpose. Section 14 also reduced the protection period of the variety, hybrid or progeny to ten years from the date of filing the application, except varieties of trees and vines that shall be protected for twenty years.

IV. Conclusion

41. After the invasion of Iraq, the bank seed and seeds reserved in other ways were affected severely by the war and the invasion. War affected human resources as well, especially the scientists who migrated to outside of Iraq either because of poverty, unemployment or fear on their own lives. There was no need in what so ever to enact law for protection of biological varieties to the level of that of developed countries as the CPA did. It becomes clear that the new Law is not regulated in such a better way than the Order was, but provides for licences and shorter period of protection. However, by replacing the Order, it shows that the current Iraqi government believes that it is not yet in a situation and condition to enact a law equivalent to the international conventions, but tries to fulfil the requirements of TRIPS Agreement by providing a protection to plant varieties in a form of sui generis system. Iraq should amend the Law No. 15 of 2013 so that get benefit from other international laws that Iraq recently became party such as International Treaty on Plant Genetic Resources for Food and Agriculture by Food and Agricultural Organization of the United Nations. Also comply in better way to international laws by increasing the duration of protection and best serve the interests of the Iraqi community by taking the advantage of the rights of saving seeds given to farmers by the UPOV Convention.

⁷⁵ Section 1 (1) defined The Committee as the national committee for registration, accreditation, and protection of agricultural varieties.