Regulatory Politics and Farmers’ Rights

Legislative Developments in the Pakistani Seed Sector

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Legislative Developments in the Seed Sector

• Significant legislative developments in Pakistan during the last couple of years
• Largely marginal to seed sector issues
• Unresolved tensions between interests of various stakeholders
  • These tensions are playing out at the implementation stage
Development of the Seed Sector in Pakistan

• Four phases of seed sector development
  • 1947-1960
    • Very little R&D; no formal procedures
  • 1960s
    • New institutions set up for research and agricultural supplies
  • 1970s
    • The Seed Act of 1976
    • FSC&RD and Seed Corporations were set up
  • 1980s onwards
    • First seed company registered in 1981
    • Seed business declared an industry in 1994
Overview of the Seed Sector

• Certified seed meets only 1/3rd of the total seed requirement for major crops
• Private sector is the principal provider of certified seed
  • Mostly local
  • Role of public sector has been declining
• 755 seed companies registered with FSC&RD
  • 5 are multinational
  • No. of active companies not known
  • Not much known about seed company operations
• A very large informal sector
  • Legal sanction, rather than quality characterises the informal sector
  • Most actors simultaneously operate in the formal and the informal sectors
## Availability of Certified Seed (2016-17) metric Tonnes

<table>
<thead>
<tr>
<th>Crop</th>
<th>Seed requirement</th>
<th>Certified seed availability</th>
<th>Total</th>
<th>Certified seed as % of imported seed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Local</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Public</td>
<td>Private</td>
</tr>
<tr>
<td>Wheat</td>
<td>1,085,400</td>
<td>86,200</td>
<td>335,415</td>
<td>-</td>
</tr>
<tr>
<td>Cotton</td>
<td>40,000</td>
<td>687</td>
<td>28,677</td>
<td>-</td>
</tr>
<tr>
<td>Rice</td>
<td>44,800</td>
<td>3,322</td>
<td>43,097</td>
<td>619</td>
</tr>
<tr>
<td>Maize</td>
<td>33,270</td>
<td>656</td>
<td>17,078</td>
<td>9,302</td>
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<tr>
<td>Pulses</td>
<td>47,496</td>
<td>704</td>
<td>2,436</td>
<td>0</td>
</tr>
<tr>
<td>Oilseeds</td>
<td>10,582</td>
<td>3</td>
<td>529</td>
<td>99</td>
</tr>
<tr>
<td>Vegetables</td>
<td>5,570</td>
<td>96</td>
<td>874</td>
<td>6,872</td>
</tr>
<tr>
<td>Fodders</td>
<td>40,138</td>
<td>5</td>
<td>7</td>
<td>16,054</td>
</tr>
<tr>
<td>Potato</td>
<td>372,725</td>
<td>-</td>
<td>-</td>
<td>6,839</td>
</tr>
<tr>
<td>Total</td>
<td>1,679,981</td>
<td>91,673</td>
<td>428,112</td>
<td>39,784</td>
</tr>
</tbody>
</table>

Source: Pakistan Economic Survey 2016-17
Key Features of the Seed Act of 1976

• A federal law
• Creates FSC&RD as the principal regulator
• Envisages minimal role for the private sector
• 2015 amendment extends regulatory oversight to a larger set of seed sector activities
• Requires compulsory registration of new varieties and seed businesses
• Prescribes requirements for variety registration
  • Bureaucratic and lengthy procedures
• Requires seed to meet prescribed standards and to be sold in labelled containers
• Prohibits sale of misbranded seed
• FSC&RD certifies seed after field inspections
• Agnostic about farmer seed saving
Issues with the Current Legal Framework

• Regulation of the seed sector an almost exclusive federal responsibility
• An overly regulated system
  • Compulsory registration of new varieties/hybrids
  • Mandatory registration of all seed business including retail
  • Regular recourse to the regulator required
• Quality control at the production stage
• The same regulatory regime applies to seeds of all crops
• Will require a huge institutional infrastructure for effective enforcement
• Unreasonable requirements regarding GM varieties
The Legal Framework Issues (Contd.)

• Very large informal sector mainly due to the anachronistic legal framework
  – Bureaucratic and lengthy procedures for variety approval
    • Takes at least two years in evaluation and testing
    • Exposes breeder to risk of piracy by competitors
  – Variety registration or seed certification add little value to seed business
  – Weak enforcement of seed laws
• Consequently, companies and breeders often market their new varieties without registering them with FSC&RD
  – Such seed often sold under company label
  – Brand names have started to emerge
  – Uncertified seed is not necessarily of poor quality
Draft Punjab Seed Act of 2017

- Seeks to amend the Seed Act of 1976 to the extent of Punjab
- Variety enlistment, rather than registration
- Voluntary seed certification
- Truth-in-labelling
- Quality control shifts from production to point of sale
- A new regulator to be created for the Punjab province
- Mandatory registration still required to do seed business
- No change in requirements regarding GM varieties
Plant Breeders Rights Act of 2016

- Pakistan’s obligations under TRIPS to legislate PBRs
- Bureaucratic politics between FSC&RD and IPO Pakistan
- Ambivalence from seed companies
- PBR Act modelled on UPOV 1991
- Provides for protection of varieties for 20 years (25 years for trees and vines)
  - If they are novel, DUS, and have an acceptable denomination
  - Protection also available to EDVs
  - 2-year transition period for existing varieties
  - Farmers’ right to save seed recognised
- Rights to be enjoyed by public sector institutions, rather than breeders
  - A research incentives fund to be created; 40% royalty for breeders
- Compulsory licensing
Preliminary Comments on the PBR Act of 2016

- A little too early for giving an assessment of the PBR Act
- VCU not part of the criteria for grant of protection
- The Advisory Board has no stakeholder representation and its role is merely advisory
- Some duplication with the Seed Act of 1976
  - DUS testing required for variety registration as well as protection
  - Same requirements for GM crops
- New variety vulnerable to leakage during processing of application
- Farmers’ role as breeders not recognised
  - No mechanism for benefit sharing with farmers
- No protection to farmers against innocent infringement or false claims by breeders
Policy Reform

• Policy to recognise institutional failures and support development of private seed industry
• Allow companies to sell new varieties with as little restriction as possible
  • Regulator to maintain a register of varieties
  • Government to specify and enforce minimum standards
  • Farmers’ buying choices to decide what stays in the market and what exits
• Seed to be sold under a truth-in-labelling regime
  • Explore ways of utilising ungraded or substandard seed (properly declared to be so) at discounted prices
• Seed certification to be voluntary and a paid-for service
  • Private companies to also certify seed
• Seed regulator to provide a set of support services
  • Databases and training, rather than approvals and licenses
Policy Reform (contd.)

- Farmers to be supported in seed saving
- Seed business to operate autonomously without having to seek licenses and approvals from officials
- Farmers and breeders to be meaningfully represented in the governance structure
- Duplication between PBR Act and the Seed Act to be removed
- Breeders must gain confidence that their varieties will not leak during trials and processing
- Balancing breeders’ rights with farmers’ rights
- Only those varieties to be granted PBR, which are superior in some respect to the existing lot
Thanks