

***Poverty Impact Analysis (PIA) and Governmental Action: «Made in Québec»
Again ?***

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Introduction

In a recently published paper, Lucie Lamarche looks at the history and content of the Québec *Act to Combat Poverty and Social Exclusion* (QACPSE)¹, which was introduced and adopted in 2002². From this analysis, she draws certain conclusions: (1) there is no such thing as a «Made in Québec» way to fight poverty, as the Québec «model» legislation was significantly influenced by many different international currents, including the neoliberal agenda of poverty management at the global level³; (2) the adoption of the *Act* has to be understood in a context where at the same time, the *Bilan* of the first 25 years of the Québec Human Rights Charter, produced in 2003, is receiving no political attention. The *Bilan* recommends better guarantees for the protection of social and economic rights in Québec⁴. In conclusion, she asks if this could mean that from now on, poverty matters more than the poor in Québec.

The present paper pays attention to the institutional aspects of the QACPSE. Amongst other considerations, it analyses section 20 of the *Act* which permits any minister who considers that a legislative or regulatory initiative may impact on poverty to proceed with a poverty impact analysis (PIA), according to predefined indicators. Section (1) of the paper introduces the general context and the consequences of the institutionalisation of

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¹ *Act to Combat Poverty and Social Exclusion*, R.S.Q. c.L-7.

² Lucie Lamarche, «The «Made in Québec» Act to Combat Poverty and Social Exclusion: the Complex Relationship between Poverty and Human Rights» in *Poverty: rights, social citizenship and legal activism*, M. Young et al (eds), UBC Press, Vancouver, 2007, 139-162.

³ Those interested in the so called «Québec model» will read with interest Daniel Salée, «Transformative Politics, the State and the Politics of Social Change in Québec» in *Changing Canada, Political Economy and Transformation*, W. Clement and L. F. Vosko (eds), Mc Gill Queen's University Press, 2003, 25-51. Salée describes the political process in Québec as a counter paradigmatic figure in the Canadian context but nevertheless a figure that may have lost touch with the meaning of social change. Those who pay attention to the Canadian situation will consult with interest the recent Bill 226 (the *Social Exclusion an Anti Poverty Act*) introduced in May 2008 to the Manitoba Legislative Assembly. See <http://web2.gov.mb.ca/bills/sess/b226e.php>

⁴ Commission des droits de la personne et des droits de la jeunesse du Québec, *Après 25 ans - La Charte des droits et libertés. Review of Recommendations*. 2003, P. Bosset, M. Coutu, M. Garon, F. Fournier. Full document available in french at : http://www.cdpedj.qc.ca/fr/publications/docs/bilan_charte_fiches.pdf. For the purpose of this article, a reference in French means that a document is not available or fully available in English. All websites are up to date as of May 2008.

the *Act*. It concludes by raising the point that the innovative «programmatic» framework that is QACPSE as well as the creation of many institutions aimed at monitoring poverty in Québec largely answer the requests and recommendations addressed to Canada by the UN Experts Committee on Economic, Social and Cultural Rights when examining successive implementation reports presented by the Government of Canada on behalf of itself and provincial and territorial governments. This positive conclusion nevertheless raises the issue of the essence of economic and social rights as provided for by UN human rights instruments that Canada ratified. Section (2) situates specifically the PIA «clause» provided for by QACPSE in the context of the ongoing process of regulation simplification which is happening in Québec; we further propose an interpretation of PIA which echoes theories of New Public Management in the comparative context of OECD countries; a final Section (3) quickly surveys the arrival of the measurement revolution⁵ in the land of poverty and considers the potential for a new generation of indicators: the human rights indicators. Finally we conclude that, in fact, the QACPSE is a convincing expression of a structural shift in the understanding of the mission of the State, and that such a shift deeply challenges both the theory and the practice of human rights and namely of economic and social rights.

1. The Québec Act to Combat Poverty and Social Exclusion: poor people or poverty ?

Sect. 1 of the QACPSE states that the object of the *Act* is to guide the Government (and Québec society) in a process of planning actions to combat poverty. Paragraph 1(2) provides for the adoption of a National Strategy [the Strategy] to this end as well as for the creation of different bodies which are to assume the functions assigned to them by the *Act* and by the Strategy. They are: the Comité consultatif de lutte contre la pauvreté et l'exclusion sociale (the Advisory Committee : art. 22); the Observatoire de la pauvreté et de l'exclusion sociale (the Observatory : art. 35) and the Fonds québécois d'initiatives sociales (the Fund : art. 46)⁶.

By 2004, two years after the adoption of the QACPSE, the Strategy, Fund and Advisory Committee had been created. The independent Observatory was not and was replaced with a ministerial working group which was to provide the Government with statistical information on the evolution of poverty in Québec⁷.

⁵ Expression borrowed from the Carr Centre Project Report 2005: *Measurement and Human Rights: Tracking Progress, Assessing Impact*. Available at: http://www.hks.harvard.edu/cchrp/pdf/Measurement_2005Report.pdf

⁶ This article does not concern this last institution although it acknowledges its crucial role in the Québec Third sector economy and social development strategy. However, the Social Initiatives Fund, created by the QACPSE, does represent the arrival of private interests into the public “combat against poverty”. In fact, the fund is described as a social variant of a Public-Private Partnership. Voir : Gouvernement du Québec, *Briller parmi les meilleurs*, 2004. This document, aimed at presenting the major orientations of the Government of Québec, became recently non available on the Web.

⁷ Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale, *Plan d'action gouvernemental en matière de lutte contre la pauvreté et l'exclusion sociale*, 2004, available at: <http://www.mess.gouv.qc.ca/grands-dossiers/lutte-contre-la-pauvrete/plan.asp>

In fact, the quantity of information on poverty made available in the name of this Strategy is overwhelming and must be distinguished from PIA, a tool aimed at forcing the legislator to take into account the potential impact on poverty of all decisions concerning policies, programs and legislations, more than one more tool designed to «measure» poverty or progress in the fight against poverty. In other words, a poverty impact analysis clause (PIA) may be seen as the political side of a measuring machinery seen as necessary to better understand where a society is at with regards to poverty and poverty reduction as well as in regard to the promotion and protection of the social and economic rights of the poorest. Nobody would deny that the definition of poverty and poverty eradication strongly depend upon the existence of reliable indicators⁸. But in fact, a careful reading of the relevant governmental documents shows that in many cases, poor persons and poor families are often reduced to numbers and statistics as if poverty stories and processes were not relevant when the logic of indicators prevail.

This approach is reflected in the 2005-2008 Strategic Plan of the Ministry⁹ responsible for the QACPSE, where the fight against poverty is identified as a strategy orientation aimed at increasing the employment rate of welfare recipients, increasing their exit rate from the welfare system and raising the income level of families living in poverty by 5% by 2008. As well, the strategy announced a quickening of the decentralisation-localisation process in the governmental initiative against poverty.¹⁰ In fact, the government announced that by 2006 it had largely attained the identified targets: the rate of those who had left the welfare roll for at least a year was of 61,7% for the year 2006-2007 (strategic target: 65%); the global rate of Québec households benefiting from welfare was for the same year of 7,6% (strategic target: 7,5%); and finally, the available income of poor families, based on the consumption basket measure, increased by 6,4% (strategic target: 5%) for the same period¹¹. According to the Ministry, those successes are largely explained by the improvement of the Child Benefit regime in Québec. In fact, families without children and young single adults are two groups that did not contribute to the betterment of the statistical situation.

For those who have witnessed over time the fluctuations and control strategies aimed at reducing the «welfare roll», the whole strategy leaves an impression of «déjà vu». In no

⁸ See *Supra*, note 7, p. 76.

⁹ Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale, Plan stratégique 2005-2008, *Pour favoriser la participation des personnes au développement et à la prospérité du Québec*, 2005, available at : <http://www.mess.gouv.qc.ca/publications/index.asp?categorie=0101201#liste> . Such Plan is the result of the adoption in 2000 of the *Public Administration Act* (L.R.Q., chapitre A-6.01). Section 1 of the Act states as a government's priority a result based management approach for which all ministries and agencies are accountable. For a critique and an assessment of this legislation, see Louis Côté and Bachir Mazouz, *Les effets de la Loi sur l'administration publique sur la qualité des services et sur la gestion dans les ministères et les organismes*, École nationale d'administration publique, Québec, 2005, 34 p. and Annex.

¹⁰ See Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale, Plan stratégique 2005-2008, *Pour favoriser la participation des personnes au développement et à la prospérité du Québec*, p. 27.

¹¹ Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale et de la Famille, *Rapport annuel de gestion 2005-2006*, 2006, p. 188 and *Rapport annuel de gestion 2006-2007*, p. 55. Available at : <http://www.mess.gouv.qc.ca/publications/index.asp?categorie=0101202#liste>

way is it an innovative strategy. For decades¹², a well-tested method for controlling the «welfare roll» has relied on the dual strategy of tightening the eligibility conditions for individuals entering the welfare system while simultaneously introducing measures aimed at encouraging or forcing other individuals to exit the system. Consequently, the adoption of a «new» *Individual and Family Assistance Act* in 2005¹³ is neither a coincidence nor a progress.

The welfare reform of 2005 pursues the distinction created before by the Québec Government between those welfare recipients who are unable to work (the deserving poor) and those who are able to work but are not currently employed (the undeserving poor). For those poor who are unable to work, welfare rates are at least adjusted to keep abreast of inflation: the deserving poor at least are not getting poorer. It is otherwise for those welfare recipients deemed to be employable. For the first time in the history of Québec welfare legislation, the recent reform committed the government to a partial indexation of employable welfare recipients. In fact, «employable» welfare recipients are now guaranteed to be poorer each year because their welfare rates are pegged, by legislation, to one half of the annual inflation rate. No wonder the number of welfare recipients in Québec is diminishing!¹⁴

Further, and in the context of the *Gosselin*¹⁵ Supreme Court decision, the 2005 welfare legislation returns to the future with the introduction of a distinction in benefits according to an age criteria. In effect, the *Individual and Family Assistance Act* creates a new category of under-25 year old welfare recipients and introduces a series of new programmes designed to ensure their employability. By definition, youth are thus considered «employable», worthy of a short-term helping hand, but ultimately part of the «undeserving» poor.

The introduction of «deserving» poverty as a legitimate government's objective may be, in fact, an appealing way to achieve its stated goal of reducing poverty in Québec. By shrinking the number of welfare beneficiaries, poverty comes to be associated with the

¹² See for example, Lucie Lamarche, «La nouvelle loi sur la sécurité du revenu au Québec: quelques réflexions d'actualité», *Revue de droit de l'Université de Sherbrooke*, vol. 21 (1991), no 2, 335-372; Lucie Lamarche « Le droit à la formation professionnelle et le projet québécois d'insertion sociale : droit des uns et espoir des autres? » in *Le droit à la formation professionnelle : un droit théorique?* Actes de la 11^{ème} Journée de droit social et du travail, sous la direction de Georges Campeau, Centre Juris Inc., UQAM, Montréal, 2001, 135-158; Lucie Lamarche, "Le droit au travail et à la formation: enjeux et doutes du droit international" in *Emploi précaire et non-emploi: droits recherchés*, Actes de la 5^e Journée en droit social et du travail, sous la direction de Lucie Lamarche, Yvon Blais éd., 1994, p. 59-89; Lucie Lamarche, «La nouvelle loi sur la sécurité du revenu au Québec dans "Le nouveau droit de la sécurité sociale: une obligation de travailler?» in Acte des journées du droit social et du travail organisées par le Groupe de recherche en droit social et du travail, UQAM, 1991, 63-87.

¹³ *Individual and Family Assistance Act*, R.S.Q., c. A-13.1.1.

¹⁴ Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale, *Plan d'action gouvernemental en matière de lutte contre la pauvreté et l'exclusion sociale, Bilan de la troisième année*, octobre 2007, p. 17. Available at : www.mess.gouv.qc.ca

¹⁵ See *Gosselin vs Québec (Procureur général)* [2002] 4 R.C.S. 429.

more blurred, but nevertheless growing, category of working poor¹⁶. If this assumption is correct, the QACPSE is more than a programmatic legislation; it becomes structuring.

The Strategy to fight against Poverty has already been assessed by the Ministry in three consecutive annual reports¹⁷. The Year I Report evaluates various actions aimed at implementing the QACPSE. The Year II Report focuses on the creation of the Advisory Committee and raises the possibility of strengthening partnerships with community organisations and charities, such as the Chagnon Foundation¹⁸. The Year III Report celebrates the creation of CEPE (Centre d'étude sur la pauvreté et l'exclusion sociale) as an alternative to the promised Observatory. The CEPE is to provide both Government and civil society with appropriate poverty indicators¹⁹. In Year III, the Advisory Committee also adopted its own Strategic Plan for the period 2006-2009;²⁰ which includes, at the request of the Minister, an examination of the impact of public utilities tariff's increase on the lives of poor families²¹.

In fact, Québec suffers neither from a lack of knowledge about poverty, nor from a lack of poverty indicators. And it is fair to say that, when compared to other provinces, Québec «brille parmi les meilleurs²²». As example, two very interesting methodological surveys relating to poverty measurement were produced by the Institut de la statistique du

¹⁶ 40 % of Québec working women and 60% of workers under 25 years of age occupy an atypical job (part time, autonomous or short term contract). Institut de la statistique du Québec, 2006. Available at: http://www.stat.gouv.qc.ca/publications/referenc/quebec_stat/con_mar/con_mar_3.htm

¹⁷ Gouvernement du Québec, Ministère de l'Emploi et de la Solidarité sociale, *Government Action Plan to Combat Poverty and Social Exclusion, Year One Report*, June 2005; *Year Two Report*, October 2006 and *Bilan de la troisième année* Octobre 2007, All Available at : www.mess.gouv.qc.ca

¹⁸ See Fondation Lucie et Andrée Chagnon at <http://www.fondationchagnon.org/>. See also *An Act to establish the Fund for the promotion of a healthy lifestyle* (L.Q. 2007, c. 1). According to the Fondation website: *The adoption of the Act is in line with the creation of a partnership between the government and the Lucie and André Chagnon Foundation aimed at fostering healthy nutrition and active lifestyles among young Quebecers, promoting social norms that encourage these healthy habits, and supporting innovation and the acquisition and transfer of knowledge in these areas.*

¹⁹ See http://www.cepe.gouv.qc.ca/publications/publications_en.asp. Also, a letter addressed to Vincent Greason and signed by Deputy Minister of Emploi et solidarité sociale, dated January 16th 2006. This letter states that Québec Government will not be able to assess the incidence and evolution of low income before 2010, when, in the context of assessing the impact of the QACPSE, relevant indicators of poverty will be made available by the Institut de la statistique du Québec. On file with authors. A first Report was produced by CEPE in 2008. See CEPE, *Le faible revenu au Québec : un état de la situation*. Available at : http://www.cepe.gouv.qc.ca/publications/pdf/CEPE_faible_revenu_au_Quebec_final2.pdf : according to this Report, 75,0% of welfare beneficiaries in Québec are single persons (256 105 households) as 13,6% are single parent families. Of all welfare households, 62,6 % are assessed as being capable of working. See p. 21. In other words, poverty concerns more and more working poor families in Québec and namely, single parent working families.

²⁰ Gouvernement du Québec, Comité consultatif de lutte contre la pauvreté et l'exclusion sociale, *Planification et orientations 2006-2009, Collectivement plus riches de moins de pauvreté, nous serons mieux ...*, 2007, Available at : <http://www.cclp.gouv.qc.ca/publications/pdf/planification20062009.pdf>

²¹ Gouvernement du Québec, *Avis du Comité consultatif de lutte contre la pauvreté et l'exclusion sociale, Les répercussions des hausses tarifaires sur les conditions de vie des personnes à faible revenu*, 2008, Available at : http://www.cclp.gouv.qc.ca/publications/pdf/avis_hausses_tarifaires.pdf

²² *Supra*, note 6.

Québec in 2005 and 2006²³. Nevertheless, this accumulation of strategies, indicators and action plans can easily lead to a significant *quid pro quo* if section 4 of the QACPSE is not carefully read. This section provides that the national Strategy to combat poverty is *intended to progressively make Québec, by 2013, one of the industrialized nations having the least number of persons living in poverty, according to recognized methods for making international comparisons*²⁴. (our emphasis)

The Government of Québec clearly indentified its discomfort when confronted with the OECD's classification of Canada in 12th position in terms of poverty alleviation amongst similarly developed countries. Historically, Québec has always estimated that Statistics Canada overestimates poverty levels in Québec.

In fact, Québec showed serious concerns about being seen as poorer than it pretends to be when civil society and human rights experts' bodies, such as the UN Experts Committee on Economic, Social and Cultural Rights (UN ECESCR), developed a strong interest in poverty indicators, as such indicators obviously explain and express the progressive realisation, or non realisation, of economic and social rights as human rights²⁵.

In Canada and in Québec, civil society shows a sustained interest and participate in the process by which UN Experts bodies, and namely the UN ECESCR, periodically assess the observance of human rights treaties that Canada (and Québec) ratified. Alternative reports are produced by civil society coalitions, which, in the case of economic, social and cultural rights, emphasise amongst other strategies, the need for better poverty indicators and for a poverty line.

The UN ECESCR and has adopted three sets of Concluding Observations concerning Canada (1993²⁶; 1998²⁷ an 2006²⁸). An analysis of these documents reveals an increasing

²³ See Gouvernement du Québec, Institut de la statistique du Québec et Ministère de l'Emploi et de la Solidarité sociale, *Recueil statistique sur la pauvreté et les inégalités socioéconomiques au Québec*, 2006, 134 p.; *Inventaire des indicateurs de pauvreté et d'exclusion sociale*, 2005, 94 p.

²⁴ See also section 3(1) of Manitoba Bill 226: *The overall goal of Manitoba's strategy to combat poverty and social exclusion is to make Manitoba one of the jurisdictions within the industrialized nations having the fewest persons living in poverty, according to recognized methods for making international comparisons*. Supra, note 3.

²⁵ Article 2 (1) of the UN International Covenant on Economic, Social and Cultural Rights states: *Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures*. Canada ratified the Covenant in 1976 and Québec, as a province, accepted it the same year. Article 16(1) of the Covenant provides that States Parties to the Covenant undertake to periodic reports on the *measures* which they have adopted and the *progress* made in achieving the observance of the rights recognized.

²⁶ Doc UN E/C.12/1993/5 (June 10th 1993), *Concluding Observations of the Committee on Economic Social and Cultural Rights considering the second periodic report of Canada* (Doc UN E/1990/6/Add.3).

²⁷ Doc UN E/C.12/1/add.31 (Dec. 10th 1998), *Concluding Observations of the Committee on Economic Social and Cultural Rights considering the third periodic report of Canada* (Doc UN E/1994/104/Add.14).

²⁸ Doc UN E/C.12/CAN/CO/4 et 5 (May 22nd 2006), *Concluding Observations of the Committee on Economic Social and Cultural Rights considering the fourth and fifth periodic reports of Canada* (Doc UN E/C.12/4/Add.15 and E/C.12/CAN/5).

demand for indicators aimed at measuring the progress or the obstacles to the realisation of the rights guaranteed by the Covenant on Economic, Social and Cultural Rights.

The first set of Concluding Observations adopted in 1993 by the UN ECESCR vaguely refers to «rates» concerning infant mortality and old age income security. Paragraph 15 of the 1993 document timidly uses the poverty line as a reference point aimed at measuring the sufficiency of income. Obviously, the whole analysis is inspired by abundant data transmitted by Statistics Canada. The second set of Concluding Observations adopted by the UN ECESCR in 1998 sets a different tone in a context where Canadian and Québec citizens had been severely hit by significant cut backs in social programs. The underlying principle that organises the Observations is based on the fact that policy decisions related to social programs (literacy, housing, welfare, income, education, access to water, etc ...) can negatively impact vulnerable groups. Without explicitly promoting poverty impact analysis, the UN ECESCR stresses the necessity for Canada to adopt an official poverty line (para. 13) as well as a national strategy for the reduction of homelessness and poverty (para. 46). Such strategies are obviously seen as being part of a larger scheme (which would include a comprehensive understanding of the Charter) aimed at protecting and promoting economic and social rights in Canada.

In the last set of Concluding Observations, adopted by the UN ECESCR in 2006, the Committee establishes a more obvious link between the realisation of economic and social rights as provided for by article 2 (1) of the Covenant and the need for poverty impact analysis methodology (para. 44). In the same way, the Committee underlines the fact that it is much more interested in statistical information that illustrates the impact of social and economic measures on the realisation of such rights than in a description of programs (para.70). Finally, the Committee reiterates the need for a national poverty line (para. 60).

Using the period of 1993 to 2006, and Canada as a case study, one can see a progression in the conceptualisation by the UN ECESCR on how to assess the realization of economic and social rights. One can see a development in the understanding of the measures and monitoring mechanisms that State parties to the Covenant need to put in place in order to demonstrate their compliance, or non-compliance, concerning their obligations. One can also see, over this same period of time, what happens when human rights law intersects with the emerging field of social policy evaluation and measurement. This meeting of the rights parameter with the measurement parameter needs to be analysed in terms of the role played by each of the actors, including the experts. To take the example of Québec, the government is willingly about to adopt, for its own national reasons, an official “poverty line”. How will the civil society react if the way in which the “poverty line” defines poverty means that “official” poverty in Québec decreases? Will such a situation equate a lower poverty level with the realisation of all economic and social rights for all? Of course, not. But the fight against poverty, when it becomes institutionalized and instrumentalized, becomes at the same time a strong dream catcher for the State and Government.

It's partly why civil society in Québec discretely departed from the fight against poverty agenda and moved forward by promoting the poverty impact analysis methodology.

2. The Poverty Impact Analysis of the Québec QACPSE clause in context

Section 20 of the QACPSE states that:

*Each minister **shall**, if the minister considers that proposals of a legislative or regulatory nature could have direct and significant **impacts on the incomes of persons or families who, according to the indicators retained under this Act, are living in poverty, shall, when presenting the proposals to the Government, give an account of the impacts the minister foresees.** (our emphasis)*

The Québec Anti-poverty movement describes section 20 the *Act* as a political victory. Needless to say, anti-poverty workers imagined that strong links would be made between poverty indicators and the PIA as the latter would be informed by the former. PIA also raised very high expectations as it was understood by many as providing an opportunity for the government to promote a transversal understanding of what poverty is and how it can be beaten.

The proposal for the introduction of sect. 20 in the QACPSE came late in the process of drafting the QACPSE and the explanation behind section 20 may be more opportunistic than political. In fact, Prof. Pierre Issalys, who was closely associated with the Collectif pour une loi visant l'élimination de la pauvreté²⁹, provides a very useful explanation of what's behind section 20. According to Issalys, the model of the QACPSE must be understood in a context whereby the government of Québec wished to use principles of public management based on public participation, accountability and innovation in order to guide the program evaluation process³⁰. According to Issalys again, it was a worthwhile experiment to attempt to import into the legislative field such a public management strategy³¹. He claims direct inspiration from the older experiment of the Simplified Regulation approach, «Made in Québec» again.

Professor Issalys' proposal came in due time and received serious attention. Not only is the Impact clause (sect. 20) now part of the QACPSE but it is also part of the *Sustainable Development Act*,³² adopted by the Québec government in 2006. Section 15 of this *Act* states that:

²⁹ At <http://www.pauvrete.qc.ca/>

³⁰ Summary of communication delivered by Prof. Pierre Issalys, Colloque de la Loi pour lutter contre la pauvreté: *Genèse, bilan et Perspective*, Fondation Robert Sauvé, Montreal, April 2005, on file with the authors.

³¹ Written communication with Vincent Greason, January 17, 2007. On file with the authors.

³² *Sustainable Development Act*, L.Q. 2006, c. 3.

In order to focus its priorities and plan its actions in a way that will foster sustainable development in keeping with the strategy of the Government, every government department, agency and enterprise in the Administration must identify, in a document to be made public, the specific objectives it intends to pursue in order to contribute to a progressive and compliant implementation of the strategy, as well as the activities or interventions it plans on carrying out to that end, directly or in collaboration with one or more stakeholders in society.

In a recently released document³³, the Québec *Ministère du Développement durable, de l'Environnement et des Parcs* published an inventory of potential indicators of sustainable development. According to this document, the Ministry is giving serious consideration to the OECD's set of indicators³⁴, including the Osberg and Sharpe Economic Well Being Model³⁵. This model includes poverty and economic insecurity as one of the four major components of sustainable development indicators. The final choice of Québec's indicators is expected to be announced sometime in 2008. In the meanwhile, lessons are to be learned from the poverty indicators' story.

Indicators are, of course, all about what and why one wants to measure. The recent history of the PIA clause in Québec tells us that they can also serve a purely political purpose. Just for the record, let us note that the Superior Court of Québec recently concluded that no party can use the section 20 of the QACPSE to force any minister to produce or make public such an impact analysis³⁶. Although a meticulous and legal examination of the text of article 20 of the QACPSE may lead to a different conclusion, we wish to place this clause back in its context. The Québec public management re-shaping³⁷ that Professor Issalys rightly refers to does not have much to do with social justice or poverty, but mostly with the so-called business need for less of more smart regulation.

Since 1998, different task forces have submitted four reports³⁸ on regulatory and administrative streamlining of the Québec Government. These reports contain more than

³³ Gouvernement du Québec, Bureau de coordination du développement durable du Ministère du Développement durable, de l'Environnement et des Parcs, *Analyse comparative des systèmes d'indicateurs de développement durable*, June 2007, available on line at : <http://www.mddep.gouv.qc.ca/developpement/indicateurs/index.htm>

³⁴ See *Good Practices in the National Sustainable Development Strategies of OECD countries*, 2006, 35 p. Available at: <http://www.oecd.org/dataoecd/58/42/36655769.pdf>

³⁵ Lars Osberg and Andrew Sharpe, *An Index of Economic Well-being for Canada*, <http://www.csls.ca/events/oct98/shrp.pdf> . See also, United Way of Canada, *The Canadian Index of Well Being: Taking Measure of the Things that Count*, Notes delivered in the context of the National Conference *Mission in Movement*, Toronto, May 6th 2005.

³⁶ *Front commun des personnes assistées sociales du Québec (FCPASQ) c. Procureur général du Québec*, CSM 500-17-023036-042, Justice Mongeon, August 15th 2006. No appeal.

³⁷ See for a general overview, OECD, *Citizens as Partners: Information, Consultation and Public Participation in Policy-Making*, 2001 at: http://www.oecd.org/LongAbstract/0,3425,en_2649_201185_33684916_1_1_1_1,00.html

³⁸ See Gouvernement du Québec, *Rapport du Groupe conseil sur l'allègement réglementaire au Québec*, (Rapport Lemaire) , 1998 : <http://www.mce.gouv.qc.ca/allègement/documents/pagesint.pdf>; *Simplifier les*

200 recommendations which focus on how to streamline regulatory and administrative requirements in the areas of taxation, labour and the environment. These reports have also dealt with simplifying industry-specific regulations in construction, natural resources, transport, tourism, and restaurants³⁹. Such initiatives echo others of a similar nature, such as the European Union Smart Regulation Initiative⁴⁰ or Canada's Implementation Plan for Smart Regulation.⁴¹

As a result of such «local» pressures and debates, the Québec Executive Council adopted in 2004 the Executive Order No 111-2005 entitled *Règles sur l'allègement des normes de nature législative ou réglementaire*⁴². According to this Executive Order, any project costing between one million and ten million dollars (legislative, regulatory or other) and likely to incur new costs for business must be accompanied by an impact analysis (for which a guide is provided) when submitted to the Council of Ministers. According to section 9 of the Executive Order, such analysis is deemed to be accessible through the Access to Information mechanism. Essentially, the burden of proof falls upon any ministry or agency to demonstrate that a given legislative or regulatory project is the best solution, or means, for addressing any issue that would impact upon the business environment. This methodology, clearly the result of a major shift in public management, consists of abandoning a «means» approach in favour of a «results-based» one⁴³. This results-based model is supposedly more measurable. Ministries and government agencies consequently become more easily accountable⁴⁴.

procédures administratives, Rapport du Groupe conseil sur l'allègement réglementaire au Québec, 2000 : <http://www.mce.gouv.qc.ca/allègement/documents/rapport-2000.pdf>; *La simplification des formalités administratives : une nécessité pour l'économie*, 2001 : <http://www.mce.gouv.qc.ca/allègement/documents/simplification.pdf>; and *Une administration plus attentive aux entreprises pour créer plus d'emplois et de richesse*, 2003 : http://www.mce.gouv.qc.ca/allègement/documents/rapport_2003.pdf

³⁹ See Gouvernement du Québec, Ministère du Conseil exécutif, *Simplifier la vie des entreprises, Rapport sur la mise en œuvre des mesures gouvernementales d'allègement réglementaire et administratif*, 2008, <http://www.mce.gouv.qc.ca/allègement/documents/Rapport-mesures-gouvernementales.pdf>

⁴⁰ Commission of the European Communities, Com (2007) 23 final, *Action Programme for Reducing Administrative Burdens in the European*, January 2007.

⁴¹ See Government of Canada, Treasury Board of Canada, *Launch the Government of Canada's Implementation Plan for Smart Regulation* at http://www.tbs-sct.gc.ca/media/ps-dp/2005/0324_e.asp. See also OECD, *OECD Reviews of Regulatory Reform in Canada, Government Capacity to Assure High Quality Regulation*, 2002.

⁴² Gouvernement du Québec, Ministère du Conseil exécutif, *Règles sur l'allègement des normes de nature législative ou réglementaire*, at : http://www.mce.gouv.qc.ca/allègement/documents/regles_decret.pdf See also *La Déclaration d'impact réglementaire : Guide à l'intention du ministère ou de l'organisme qui doit compléter une déclaration d'impact réglementaire* at http://www.mce.gouv.qc.ca/allègement/documents/guide_declaration_impact240106.pdf

⁴³ Gouvernement du Québec, *La réglementation par objectifs, Propositions du Groupe de travail Justice – Secrétariat à l'allègement réglementaire, Conseil exécutif*, June 2001, at http://www.mce.gouv.qc.ca/allègement/documents/reglementation_objectifs.pdf.

⁴⁴ About Result Based Management and Accountability, see: Allan Tupper, «The Contested Terrain of Canadian Public Administration in Canada's Third Century», [2001] 35:4 *Journal of Canadian studies*, 142 and Richard Mulgan, «Accountability: an Ever Expanding Concept?», [2000] 78:3 *Public Administration* 555. See also Tony Bovaird and Elke Löffler, «Evaluating the Quality of public governance: indicators, models and methodologies», [2003] 69 *International Review of Administrative Sciences* 313.

One might have expected that what is good for business is good for the poor, but as usual the devil is in the details. In March 2006, the Executive Council of the Government of Québec produced a note explaining at great length the administrative process for all legislative or regulatory projects as well as the technical requirements for any similar proposal. We learn in this document that if a Minister feels appropriate or necessary to circulate a PIA memo, such memo will be added to the *mémoire* as a complementary and confidential note. As a result, and in accordance with the *Act respecting Access to documents held by public bodies and the Protection of personal information*⁴⁵, this confidential note will remain inaccessible for a minimum of 25 years, if not forever.⁴⁶

Interestingly enough, the document adopted by the Ministère du Conseil exécutif du Québec and entitled *Fonctionnement du Conseil des Ministres* was amended successively in March 2006 and 2007 in order to add section 3 entitled *Les implications sur le revenu des personnes ou des familles en situation de pauvreté*⁴⁷. By qualifying as confidential the complementary note provided for by section 3, the Executive Council equates information related to poverty to other strategic information such as opinion polls, results of informal consultations or communication strategies. Obviously, such restrictions do not apply to information related to business where, conversely, most of the *mémoires* submitted to the Executive Council are accessible.

The Poverty Impact Clause, provided for by Sect. 20 of the QACPSE is anything but what it looks like. Indeed, as the recent history of Québec public administration shows, when it comes time for governments to solicit citizen participation, some citizens are better seen than others. The Smart Regulation project is in fact a business model which is hardly transferable to the land of poverty because it is aimed at producing less government, not a more responsible government. Further, the context in which PIA appeared in Québec, including the adoption of a well-received Strategy to combat poverty, reveals that there is a political need to distinguish between poverty and the poor. Poverty is an obstacle to economic prosperity and the poor, a new legal category, are deemed to replace, from a statistical point of view, welfare recipients. Lastly, the numerous references to the work of the OECD,⁴⁸ instead of to the United Nations Human Rights system, contributes to legitimating the State objective which is to rank better amongst nation states in the fight to eradicate poverty. To this end, poverty seems to become an issue of management and not of human rights.

⁴⁵ L.R.Q. A-2.1

⁴⁶ Art. 30 and ff. of the Act.

⁴⁷ Gouvernement du Québec, Ministère du Conseil exécutif, *Fonctionnement du Conseil des Ministres, March 2007*, at : <http://www.mce.gouv.qc.ca/publications/fonctionnement.pdf>

⁴⁸ One would be tempted here to proceed by analogy with the case of the Canadian health system. In the *Chaoulli* Supreme Court decision ([2005] 1 R.C.S. 791), judges relied significantly on the 2002 *Final Report of the Commission on the Future of Health Care in Canada* (Romanow Report) and on the *Final Report of the Standing Senate Committee on Social Affairs, Science and Technology* (Kirby Report). Both Reports quote abundantly the OECD working papers in relation to health services in Member States. See amongst others: OECD, *Improving Health System Performance in OECD Countries*. Paris, 2001. Again, comparing Canada to other countries seems more like an end than a means aimed at promoting every Canadian's right to health.

The entire debate on the relevance of fighting poverty within a legal framework should not be confused with the «fact» that the globalized economy produces more visible and invisible poor than ever before. Poverty, as a fact, is often correctly described as a cause and consequence of many human rights violations. But such a statement requires a deliberate choice of norms aimed at describing and measuring poverty. As Pearl Eliadis pointed out in a study about social cohesion, poverty and exclusion:

*Much of the crosscutting of horizontal research carried out [...] on social policy and poverty related issues tends to focus on quantitative research that implicitly assumes a certain set of norms. This is critical for horizontal policy making but has not been generally or explicitly accepted or integrated in [federal] policy making.*⁴⁹

The fact that Eliadis' study addressed the federal policy-making process does not alter the value of the statement. Clearly, the Québec model was not influenced by the normative value of a human rights framework. Poverty is isolated as a «social problem» and the Québec Government commits itself to go from «here» to «there» once it has determined the necessary and relevant indicators needed for the measurement.

The «here to there» question is at the heart of the strategy promoting poverty indicators. But it promises nothing more than the monitoring of the number of poor in a given society at different moments in time, based on a technical definition of poverty. From a political standpoint, this sounds like a very moderate project. Even more in a society like Canada, or Québec, which has no lack of relevant statistical information.

Some might even say that the whole movement toward Poverty Impact Assessment and Poverty Indicators is profoundly apolitical and that it goes hand in hand with the new public management approach, with its fundamentally results-based orientation. In other words, a «modern» government can more easily commit itself to reduce poverty as a «result» because such a project sets the beginning and the end of its obligation. The remaining zone of political tension then becomes the «threshold of poverty» which is precisely why the Government of Québec is cautiously creating technical institutions, such as the «professional» CEPE, which will provide expert answers aimed at supporting the legitimacy of future policies and programs based on indicators. You cannot beat the experts !

As the Supreme Court decision in *Gosselin*⁵⁰ clearly demonstrates, the courts are very reluctant to question the wisdom of social policy makers and the link between the social policy discourse and its impact on beneficiaries. This is especially true if the beneficiaries of social policy happen to be poor or disempowered. In *Gosselin*, Chief Justice McLachlin expressed unwavering confidence in the stated intention of the Government when designing a program to remove young people from welfare:

⁴⁹ Pearl Eliadis and Leah Spicer, *Poverty and Exclusion: Normative approaches to Policy Research*, Government of Canada, Policy Research Initiative, November 2004, p. 26. At : http://policyresearch.gc.ca/page.asp?pagenm=v7n2_art_19

⁵⁰ *Gosselin vs Québec (Procureur général)*, *Supra*, note 16.

The government's short-term purpose in the scheme at issue was to get recipients under 30 into work and training programs that would make up for the lower base amount they received while teaching them valuable skills. The differential regime of welfare payments was tailored to help the burgeoning ranks of unemployed youths obtain the skills and basic education they needed to get permanent jobs. The mechanism was straightforward. In order to increase their welfare benefits, people under 30 would be required to participate in On-the-job Training, Community Work or Remedial Education Programs.⁵¹

The Supreme Court decision confirmed the Government in its objective of prioritising the control of quantitative economic distress over the dignity and life of identifiable poor persons. From the moment “poverty” substitutes itself for the “poor” on the legal agenda, one cannot expect things to get better.

While we are quite critical in our assessment of the QACPSE, we are not saying that poverty does not exist, nor that quantitative information about poverty is not relevant. To the contrary, we are attempting to distinguish between poverty and the governmental discourse on poverty. As we said before, indicators are only valid as long as one knows what is to be measured and why. This issue is even more relevant now that we enter an «era of measurement» in a context of governance motivated by targeted objectives and accountability⁵². The next section will briefly survey the literature concerning poverty measurement and will tackle the issue of the purpose of such measurement in order to show that the emerging human rights assessment methodology is a more appropriate normative framework on which to base measurement of poverty. It is also a legitimate antidote to the liberal discourse concerning the fight against poverty.

3. From Measuring Poverty to Social Impact Assessment and then to Human Rights Impact Assessment: A New Paradigm for the fight against Poverty

Since the 1970's, Canadian civil society actors have focussed the « poverty » debate within the paradigm bounded on the one hand, by the low-income cut off (LICO) measure and on the other, by measures of absolute poverty. No doubt this approach was motivated by the constant tension surrounding the level of social assistance programs, including, generally, their non-indexation to the cost of living. Institutions such as the Canadian Council of Social Development⁵³ and the National Council of Welfare always

⁵¹ Para. 41.

⁵² Another example of such strategy can be found in Government of Canada, Status of Women Canada, Report of the Expert Panel on Accountability Mechanisms for Gender Equality, 2005. Available at: http://www.swc-cfc.gc.ca/resources/panel/report/index_e.html. See Recommendation no 3: *Integrate achievement of equality for women into the accountability mechanisms of the modern management initiatives being pursued across the federal government, under the leadership of the President of the Treasury Board* (p. 28).

⁵³ At <http://www.ccsd.ca/pubs/pubcat/index.htm>

provided useful information in that regard.⁵⁴ The struggle around the official absence of such a threshold had also been the object of repeated demands from UN and Treaty monitoring bodies over the last decade⁵⁵.

Such demands were primarily motivated by a political struggle aimed at promoting wealth distribution. Poverty, especially in a wealthy country, is symptomatic of the failure of that country in wealth distribution. Without entering into the discussion, the connection between the ideology of a Welfare State and the search for the constant improvement of an adequate standard of living seems quite obvious. In addition, and as far as social rights are concerned, this aspiration is expressed in Article 2(1) of the United Nations *International Covenant on Economic, Social and Cultural Rights* (CESCR)⁵⁶, which Canada ratified in 1976.

Since the 1960's, economists and Social Science experts have written extensively on the issue of measurement and impact assessment. Indicators measure in a longitudinal fashion (at different points in time) as Impact Assessment evaluates the impact of a precise program or policy on a specific reality (poverty, for example). Social Impact Assessment (SIA) scopes as Social Indicators monitor over time. SIA is related to the idea that diverse policies, programs or regulations, or the lack of, may generate an adverse impact on more vulnerable groups. SIA is then more about social justice than about the technical measurement of poverty as it not only concern measures aimed at tackling poverty per se.

In a paper published in 1996, Burdge and Vanclay recall that SIA method probably has its origins in the 1969 US National Environment Policy, specifically in the context of project planning. Although nobody would seriously deny the value of such process, Burdge and Vanclay are not ashamed to say that there is a tendency to describe SIA as promoting societal neutrality because the methodology heavily relies on experts'

⁵⁴ See for example, Government of Canada, National Council of Welfare, for their constant publications since the beginning of the '80's about poverty lines, poverty profiles and welfare incomes at: <http://www.ncwcnbes.net/en/publication-list.html>.

⁵⁵ See about Canada: UN Doc E/C.12/1/Add.31, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, Dec. 12th 1998, para 13: [...]The absence of an official poverty line makes it difficult to hold the federal, provincial and territorial governments accountable with respect to their obligations under the Covenant. UN Doc A/58/38(Part I), para. 358, *Committee on the Elimination of Discrimination against Women, Concluding observations*, March 20th 2003: [...] The Committee urges the State party to assess the gender impact of anti-poverty measures and increase its efforts to combat poverty among women in general and the vulnerable groups of women in particular. UN Doc CCPR/C/CAN/CO/5, para. 24, *Concluding observations of the Human Rights Committee*, April 20th 2006, [...] The State party should adopt remedial measures to ensure that cuts in social programmes do not have a detrimental impact on vulnerable groups. UN Doc E/C.12/CAN/CO/4-E/C.12/CAN/CO/5, *Concluding observations of the Committee on Economic, Social and Cultural Rights*, May 22nd 2006, para. 11: [...] The Committee regrets that most of its 1993 and 1998 recommendations in relation to the second and third periodic reports have not been implemented, and that the State party has not addressed in an effective manner the following principal subjects of concern, which are still relevant: [...] (e) The absence of an official poverty line; [...].

⁵⁶ Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to *achieving progressively the full realization of the rights* recognized in the present Covenant [...].

knowledge, deemed to be objective⁵⁷. They add that SIA is not an ultimate guide to decision making. As for Social Indicators, Cobb and Rixford remind us that there are no value-free indicators and that indicators can procure outcomes only if one has control over resources⁵⁸. Authors are numerous to say that the main *quid pro quo* about SIA is that it confuses procedural (by promoting participation and process⁵⁹) and substantive social justice⁶⁰.

At the end of the day, and to stay within methodological concerns, lessons were indeed learned from both procedures. As far as poverty is concerned, they deal with both the «value» argument as well as that of the understanding of the process of poverty. Else Oyen suggests that poverty measurement methodology moved by steps: the first phase is narrative (story telling); the second about targeting poor people as a clientele; the third tried to think in terms of poverty reduction and finally, a fourth step apprehends poverty as a process of poverty production⁶¹.

It is fair to say that many valuable models are still at the third stage in Canada⁶² and are not offering any normative «values» that would answer the question of «the what and the why» from the perspective of the poor person and not from that of poverty (as a phenomenon).

Recent advances in research and advocacy indicate that poverty clearly incorporates notions of dignity and capabilities⁶³. In other words, poverty is not synonymous with a lack of financial resources only. This notion is well captured in the statement adopted by the UN CESCR Experts Committee in 2001:

⁵⁷ Rabel J. Burdge and Frank Vanclay, «Social Impact Assessment : A contribution to the State of Art Series», (1996) 14 *Impact Assessment* 59.

⁵⁸ Clifford W. Cobb and Craig Rixford, *Lessons learned from the History of Social Indicators*, Redefining Progress, 1998. At www.rprogress.org

⁵⁹ See *Measuring Quality of Life: The Use of Societal Outcomes by Parliamentarians*, Office of the Auditor General of Canada, 2001, p. 30: [...] *process by which they [measures] are selected should be fair, open, transparent and inclusive.*

⁶⁰ See D.R. Becker, C.C. Harris, E.A. Nielsen and W.J. McLaughlin, «A comparison of a technical and a participatory application of social impact assessment», [2004] *Impact Assessment and Project Appraisal* 177.

⁶¹ Else Oyen, *Poverty Production: A Different Approach to Poverty Understanding in Advances in Sociological Knowledge*, 2002, at: <http://www.reglo-bg.org/toc4.htm>

⁶² See for example, Canadian Centre for Policy Alternatives, *The Rich and the Rest of Us, The Changing Face of Canada's Growing Gap*, Armine Yalnizyan, 2007, at: <http://policyalternatives.ca/Reports/2007/03/ReportsStudies1565/index.cfm?pa=BB736455> and National Council of Welfare, Reports Series no 126, *Solving Poverty: Four Cornerstones of a workable strategy for Canada*, 2007, at: <http://www.ncwcnbes.net/documents/researchpublications/ResearchProjects/NationalAntiPovertyStrategy/2007Report-SolvingPoverty/ReportENG.pdf>. The four identified «corners» are: measurable targets, actions plans, consultation and reporting (p. 8).

⁶³ About the theory of capabilities, see : Amartya SEN, *Inequality Reexamined*, Oxford: Clarendon Press, 2000.

*Poverty may be defined as a human condition characterized by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights*⁶⁴.

When compared to the wording of section 2 of the QACPSE⁶⁵, one can see that the purpose of the QACPSE deliberately keeps human rights at distance, hereby denying the findings of Eliadis when she suggests that the legal policy framework is evolving, and, in particular, that exclusion and poverty are moving closer together and closer to equality rights.

There is some truth though, in Eliadis' proposal as she links the denial of equality rights (or more generally of all human rights) and social exclusion⁶⁶. This proposal echoes the 2001 UN ESCR Experts Committee statement:

*[...] the application of the international human rights normative framework to these issues [poverty eradication strategies] helps to ensure that essential elements of anti-poverty strategies, such as non-discrimination, equality, participation and accountability, receive the sustained attention they deserve. In this context, the Committee wishes to highlight briefly three features of the international **human rights normative framework**. (our emphasis)*⁶⁷.

This Statement was adopted a year after the publication by UNDP 2000 Human Development Report entitled *Human Rights and Human Development*⁶⁸. Largely influenced by the Capabilities model⁶⁹, the main proposal of this Report is to suggest that the human rights framework, as a set of internationally shared norms and values, provides an added value to development because it links it to the idea that others have duties to facilitate and enhance human development⁷⁰. Interestingly enough, such a normative framework not only concerns the substance of human rights, but as well, components of human rights seen as essential to poverty eradication strategies: non-discrimination, equality, participation and accountability. In addition, it emphasises an essential element of the theory of human rights: the identification of the duty bearers and of their responsibilities in regard of each and every component of the main normative proposal.

Human Rights Impact Assessment (HRIA) can then be described as purposive measurement, hereby providing a universal answer to the question of why we measure

⁶⁴ UN Doc E/C.12/2001/10, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic, Social and Cultural Rights*, May 2001.

⁶⁵ Section 2 of the QACPSE reads as follow : *For the purposes of this Act, "poverty" means the condition of a human being who is deprived of the resources, means, choices and power necessary to acquire and maintain economic self-sufficiency or to facilitate integration and participation in society.*

⁶⁶ Supra, note 49.

⁶⁷ Supra, note 64, at para. 9.

⁶⁸ At <http://hdr.undp.org/en/reports/global/hdr2000/>.

⁶⁹ Supra, note 63.

⁷⁰ UNDP, 2000 *Human Development Report*, p. 21.

social change. Not only do we measure in order to properly read economic poverty, but mostly, we measure it in order to identify, qualify and explain how duty bearers, including states and governments, fail or succeed with regards to minimum human rights' requirements.⁷¹ Hereby, human rights indicators or impact measures contribute to the re-politicisation of human rights and counter attacks the negative effect of the school of objective social indicators measurement. Going, or not going, from «here to there» means that some duty bearers failed in their legal duty to implement, sometimes progressively, but nevertheless, all human rights.

In a landmark paper, Todd Landman demonstrated that human rights can be measured in principle, in practice and as outcomes of government policy⁷².

In fact, the methodology of indicators, and more especially of social indicators, and the one of HRIA, recently found common grounds in measurement. As Otto Sano rightly reminds us, the difference is more purposive than methodological when compared to the social impact assessment approach. The indicators themselves still have to survive a quality control level. Some propose the SMART model (indicators have to be specific, measurable, attainable, relevant and time framed). Others promote the multiple use advantage of human rights indicators such as: providing information about context; helping the classification and qualification of issues; supporting a compliance and monitoring process; help testing an hypothesis model; validate a predictive model; or promote and support advocacy⁷³. In the same line of literature⁷⁴, still others prefer classifying indicators as global, programmatic or impact driven⁷⁵.

⁷¹ See OHCHR, *Human Rights and Poverty Reduction, A Conceptual Framework*, 2004 and OHCHR, *Report on Indicators for Monitoring Compliance with International Human Rights Instruments* (Report presented at the 18th meeting of chairpersons and the fifth inter-committee of the human rights treaty bodies), HRI/MC/2006/7, 11 May 2006; Hans Otto-Sano, *Human Rights Indicators, Purpose and Validity*, Paper for the Turku/Abo Expert Meeting on Human Rights Indicators, 2005 at: <http://www.humanrightsimpact.org/publications/item/pub/102/> and Hans Otto-Sano, «What's the Goal ? What's the Purpose ? Observations on Human Rights Impact Assessment», [2007] 11:3 *The International Journal of Human Rights*, 275.

⁷² Todd Landman, «Measuring Human Rights: Principle, Practice and Policy», [2004] 26 *Human Rights Quarterly* 906. See also T. Landman, *Studying Human Rights* (London: Routledge, 2006 and G. de Beco, 'Human Rights Indicators for Assessing State Compliance with International Human Rights', (2008) 77 (1) *Nordic Journal of International Law* 1-28.

⁷³ See Vera Institute of Justice, *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector*, 2003, at: http://www.vera.org/publications/publications_5.asp?publication_id=207 and Shareen Hertel, «Why Bother ? Measuring Economic Rights: the Research Agenda», [2006] 7 *International Studies Perspectives* 215.

⁷⁴ For a general overview about ongoing experiences, see Measurement and Human Rights: Tracking Progress, Assessing Impact, Carr Center Project Report, 2005, at: <http://www.ksg.harvard.edu/cchrp/programareas/impact.php>

⁷⁵ See on Child Labor: *A standard indicator to quantify child labour needs to be accompanied by core set of diagnostic indicators to guide policy in the area of child labour. Data are needed, for example, on the contribution of children to household income in order to understand the opportunity costs incurred by households in sending their children to school. Information is needed on population groups particularly vulnerable to schooling loss and child labour and (e.g., indigenous children, migrant children, newly urbanised children) in order to effectively target policy interventions. The development of instruments for impact assessment will also be critical in order to learn from and build on current policy experience in the area of child labour. The building of child labour diagnostic indicators would link to and complement an*

Respect of all human rights, however measured, is about putting an end to human rights violations, seen as the ultimate outcome. No doubt that the added value of HRIA can be described as a process that goes to the heart of the policy making and implementing process. The Special Rapporteur on the right to health, Professor Paul Hunt, captures this idea in his 2006 Case study by stating that what has to be assessed concerns: the structural conditions of the exercise of a right, the processes by which it is or not being implemented and the outcomes⁷⁶.

After almost a decade of exploring HRIA and social indicators methodologies, one crucial question remains unanswered and which is characterized by the tension between data analysis and the normative monitoring of human rights. At a Seminar held in Turku in 2005, Prof. and Expert Scheinin precisely raised this issue in the context of the UN Human Rights Committee and other UN Treaty Expert Bodies' working methods⁷⁷. Human rights, as normative and legal standards, were designed to deal *in concreto* with human rights violations. In this context, indicators as well as assessments methodology are to be seen as factual information relevant to a finding. In a certain manner, and to go back to Oyen's proposal⁷⁸, human rights violations are as much about story-telling as they constitute an accumulation of facts which lead to a better understanding of the process of poverty. The process of poverty can then be described as a multifaceted process of numerous human rights violations, at the procedural as well as at the substantive levels.

Scheinin's point is that such a methodological understanding of human rights impact assessment as well as of poverty indicators is purposive and thereby has to be distinguished from the politically sensitive issue of comparative ranking amongst states or of comparative performance assessment. Doing better does not mean that you are doing it right and, as surprisingly as it may sound, does not mean either that human rights violations are less numerous.

Thereby, a process that leads to ranking states as human rights duty bearers amongst themselves can be seen as just another process or as a new process that carries its own

on-going effort on labour market diagnostics within the World Bank. From World Bank Inter Agency Consultation, July 2006, at: <http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTTRADERESEARSEARCH/0..contentMDK:21010214~menuPK:51428063~pagePK:210082~piPK:210098~theSitePK:544849,00.html>

⁷⁶ Paul Hunt and Gillian MacNaughton, *Impact Assessments, Poverty and Human Rights: A Case Study Using The Right to the Highest Attainable Standard of Health*, Unesco, Paris, 2006. See also Rajeev Malhotra and Nicolas Fasel, *Quantitative Human Rights Indicators*, in Oslo Workshop on Developing Justice Indicators, May 2006, at: <http://www.jus.uio.no/forskning/grupper/humrdev/indicators.html> See also, André Frakovits, *The Human Rights based Approach and the United Nations System*, UNESCO Strategy on Human Rights, UNESCO, Paris, 2006.

⁷⁷ Martin Scheinin, *Use of Indicators by Human rights Treaty Bodies, Experiences and Potentials*, Paper for the Turku/Abo Expert Meeting on Human Rights Indicators, Background Paper no 3, 2005 at: <http://www.humanrightsimpact.org/publications/item/pub/102/>

⁷⁸ *Supra*, note 61.

agenda. Again, Scheinin's concerns are relevant as they underline the fact that politically, State parties, when relying on Social Science methodologies, are in fact using a different framework than the human rights' one. They are in fact abandoning a violations approach in favour of promoting a performance one. In addition, it has to be kept in mind that the arrival of such methodologies coincides with a new vision of government's mission aimed at measuring performances based on identified results. In other words, human rights and poverty impact assessments, especially in developed countries, makes sense only as far as the aimed results are driven by human rights requirements.

Conclusion

It is almost a cliché to recall that the Government of Québec (notwithstanding which political party is in power) claims a strong tradition of being «ahead of the «neoliberal curve» in many regards. As Salée rightly points out⁷⁹, Québec is a counter paradigmatic State. Successive Québec governments became «OECD» obsessed. In a more sophisticated manner, they seized before other Canadian governments the opportunity to manage poverty in a results-based fashion. Both the 2000 *Public Administration Act* and the QACPSE carefully avoid references to the Québec *Charter of Rights and Freedoms*⁸⁰. In the more recent *Individual and Family Assistance Act*, one can look in vain for any reference to the right of a person or of a family not to be economically poor or deprived of basic necessities, such as housing, food, education or health. The «what and why» of the search for new poverty indicators as well as for poverty impact assessments' commitments is even clearly stated in the QACPSE: Quebec limits its ambition at looking less poor when compared to comparable nations, even more so in a globalised and highly competitive world.

Of course, one could object to this analysis, that that such an ambition is conditioned by the requirements contained in both the Québec and Canadian Charter of Rights, both of which guarantee equality rights and the right to the security of the person. The Supreme Court decision in *Gosselin*⁸¹ nevertheless shows that «you cannot beat the experts». The story of Louise *Gosselin* was compelling. But the plan of the Government of Québec was convincing. When counting the poor, the statistical combat against poverty prevails.

The QACPSE, both the law and its machinery, may prove to be an unfortunate initiative from the point of view of social activists. In fact, it may lead us back to where we started: administrative law, increasingly the source of decisions which affect poor people's lives, is less and less shaped by constitutional law and consequently decisions touching poor people are less informed by human rights concerns. The poor are counted and their rights, discounted.

Of course, administrative law is probably not what it used to be. As Government overemphasizes its obligation to be more accountable in the land of results, it is precisely these results, usually set in annual ministry plans, that must be questioned in a human

⁷⁹ Supra, note 3.

⁸⁰ But for one reference in the Preamble to the QACPSE.

⁸¹ Supra, note 15.

rights perspective. The human rights framework is available to provide meaningful answers to the «what and why» and to the «from here to there» of any system of poverty indicators or of poverty impact assessment project. HRIA, because it relies on a legal normative environment, does imply the reliance on effective judicial and quasi judicial remedies.

This case analysis convinces us that human rights and social justice activists have to pay more attention to new public management strategies as well as to the numerous evaluation and benchmarking devices made available for the purpose of public decision making. We may have to temporarily depart from litigation in order to come back to it better informed. Otherwise, the «poverty experts» will continue to promote before the courts what they consider as an implicit consideration of the human rights of an increasing amount of visible and invisible poor in our society. The time has come to distinguish between the political discourse about poverty, and the rights of the poor.