Institutionalization and Exclusion

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Institutionalization and Exclusion:

Croatia’s Failure to Meet the Demands of the Convention on the

Rights of Persons with Disabilities

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Abstract

On August 15, 2007, Croatia became the fourth country in the world to ratify the Convention on the Rights of Persons with Disabilities. Since then, however, Croatia has failed to meet its obligations under the international treaty. Croatia has made virtually no progress on deinstitutionalization and continues to deny persons with disabilities the right to legal capacity and equal access to education and employment. In Croatia, persons with mental and intellectual disabilities continually face isolation and segregation on the basis of their disability. In order to meet the goals of the CRPD, Croatia must focus on building a more inclusive society that promotes the full integration and participation of persons with disabilities.
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Introduction

Persons with disabilities are the largest minority group in the world, and yet, many of these individuals encounter the greatest deprivation of human rights.\(^1\) Persons with intellectual and mental disabilities, specifically, are most at-risk for human rights abuses and social exclusion.\(^2\) Excessive


institutionalization of individuals with mental and intellectual disabilities is one of the highest contributing factors to their exclusion from society. Although institutions are often viewed (distinguishing between persons with mental disabilities (e.g. schizophrenia and bipolar disorder) and persons with intellectual disabilities (e.g. limitations caused by Down’s syndrome)); see also United Nations Development Programme Croatia, Unplugged: Faces of Social Exclusion in Croatia, at 3 (2007) available at http://www.undp.hr/upload/file/130/65078/FILENAME/WEB_engleska_verzija.pdf (noting that this population is commonly institutionalized and denied the right to self-determination).

as a means of rehabilitation, in reality, many individuals living in long-term institutions spend their entire lives cut off from the outside world.⁴

On December 13, 2006, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities (“CRPD”), making it the first legally enforceable international treaty specific to persons with disabilities.⁵ One

⁴ See, e.g., Witness, supra note 3 (recognizing that institutions were originally established to provide professional treatment to persons with disabilities, but now ultimately serve to keep persons with disabilities outside of mainstream society).

⁵ See United Nations Enable, Ratifications, http://www.un.org/disabilities/default.asp?navid=18&pid=257 (last visited Aug. 25, 2010); see also Kayess, supra note 1, at 13 (contending that prior to the adoption of the CRPD, the United Nations system unsuccessfully attempted to protect
of the treaty’s core goals is to promote the social integration of persons with disabilities; parties to the CRPD promise, among other things, to ensure that persons with disabilities enjoy full inclusion in their communities. On August 15, 2007, Croatia became one of the first countries in the world to ratify the CRPD. Regarding the rights of persons with intellectual and persons with disabilities through existing human rights treaties).


mental disabilities, however, Croatia has failed to adhere to its commitments under the international treaty. In Croatia, persons with intellectual and mental disabilities continue to be pushed to the margins of society, rather than becoming active and contributing members of the community.

Part I of this Comment provides a brief overview of the history of international disability law and the text of the CRPD
as well as a discussion of Croatia’s current disability scheme. Part II analyzes Croatia’s disability law against the main objectives and requirements of the CRPD and argues that Croatia’s policies regarding institutionalization, legal capacity, education, and employment contravene the core principles of the CRPD. Part III recommends that Croatia adopt policies which promote the participation and inclusion of persons with mental and intellectual disabilities by developing a plan for deinstitutionalization, reforming the law on legal capacity, and improving access to mainstream education and employment.

10 See discussion infra Part I (focusing on the rights and status of persons with mental and intellectual disabilities in Croatia and outlining various articles of the CRPD).

11 See discussion infra Part II (explaining that Croatia’s disability law with respect to persons with mental and intellectual disabilities directly violates articles 12, 19, 24, and 27 of the CRPD).

12 See discussion infra Part III (proposing various reforms to help bring Croatia’s disability law in line with its obligations under the CRPD).
I. Background

A. The History of Disability Law and the Road to Ratification of the CRPD

Despite the overwhelming number of persons with disabilities, the international community has traditionally overlooked disability rights. Prior to the adoption of the CRPD, none of the existing, legally enforceable human rights treaties specifically focused on the protection of persons with disabilities. While article 23 of the Convention on the Rights of the Child (“CRC”) addresses the rights of children with mental and physical disabilities, the article centers on the “special needs” of disabled children as opposed to a chief focus on a system that promotes equality among all children regardless of disability. Thus with no existing disability-based treaty,  

13 See, e.g., Kayess, supra note 1, at 12 (characterizing disability as an “invisible element” of international law).
14 See Stein, supra note 1, at 679 (explicating that before the CRPD, to be protected, persons with disabilities generally needed to possess an identity characteristic beyond their disability).
persons with disabilities were generally unable to assert human rights violations on an international scale.\textsuperscript{16} 

In response to pressure from disability NGO’s, the United Nations system initially developed various “soft laws” to address the rights of persons with disabilities.\textsuperscript{17} The year 1981, for example, was dubbed the International Year of the Disabled, and was followed by the U.N.’s Decade of Disabled

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children with disabilities to receive special care and promoting access to rehabilitation services), with Convention on the Rights of Persons with Disabilities, supra note 6, art. 7 (stating that children with disabilities should enjoy all human rights and fundamental freedoms on an equal basis with other children).

\textsuperscript{16} Cf. Kayess, supra note 1, at 16 (pointing out that many in the international community opposed a binding treaty based on the belief that the rights of persons with disabilities were already adequately protected under international law).

\textsuperscript{17} See Stein, supra note 1, at 679 (referring to the series of non-binding disability-based resolutions, declarations, and protocols passed previous to the CRPD).
Persons. Among the most significant outcomes of the International Year of the Disabled, was the formation of the World Programme of Action Concerning Disabled Persons ("WPA"), which first emphasized the need to view disability from a human rights perspective. Although the WPA was one of the most noteworthy efforts to internationalize disability rights, its central focus on prevention and rehabilitation failed to address some of the most important needs of persons with disabilities.

In 1993, the United Nations General Assembly adopted the Standard Rules on the Equalization of Opportunities for Persons with Disabilities ("Standard Rules"), which represent states’

18 See Globalizing a Response to Disability Discrimination, supra note 6, at 441 (signaling these resolutions as the beginning of the road to ratification of the CRPD).


20 See id.; see also Kayess, supra note 1, at 16 (criticizing the WPA for its focus on prevention and medical treatment rather than recognizing disability as a part of human diversity).
strong moral and political commitment (although non-legally binding commitment) to promote the equal participation of persons with disabilities. While these policy and programmatic documents had a major effect in promulgating disability rights, the need for a legally binding international treaty still remained.


22 See Kayess, supra note 1, at 16 (arguing that, on the whole, the series of non-binding international instruments have had a markedly limited impact on disability rights).
B. The CRPD Text

On May 3, 2008, the CRPD entered into force, making it the first binding human rights treaty specific to persons with disabilities.\(^{23}\) To date, there are 147 signatories and 93 ratifying countries.\(^{24}\) Perhaps the most significant aspect of the CRPD is its focus on social inclusion and participation.\(^{25}\)

\(^{23}\) See Press Release, United Nations Enable, With 20 Ratifications, Landmark Disability Treaty Set to Enter into Force on 3 May (Apr. 3, 2008), available at http://www.un.org/News/Press/docs//2008/hr4941.doc.htm (reporting that Ecuador became the twentieth country to ratify the CRPD, thus setting the treaty to enter into force).


\(^{25}\) See Unplugged: Faces of Social Exclusion in Croatia, supra note 2, at 9 (stressing that persons with disabilities are among
The CRPD represents a “paradigm shift” away from a medical model and social welfare view of disability to a human rights approach.\textsuperscript{26} Persons with disabilities are no longer seen “as objects of charity, medical treatment and social protection.”\textsuperscript{27} The most marginalized and that this is typically the result of social stigma and prejudice).


\textsuperscript{27} Statement by Louise Arbour UN High Comm’r for Human Rights on the Ad Hoc Committee’s adoption of the International Convention on the Rights of Persons with Disabilities (Dec. 5 2006), available at http://www.ohchr.org/English/issues/disability/
Instead the CRPD, emphasizes their role as “subjects of rights” that can have an active and contributing role in their communities and are capable of making decisions about their life and future.\textsuperscript{28}

Article 19 is one of the most significant provisions of the CRPD because it recognizes the rights of persons with disabilities to live independently and be included in the community.\textsuperscript{29} Pursuant to the CRPD, state parties must take full and effective measures to prevent the segregation of persons

\footnotesize{docs/statementhcdec06.doc (last visited Aug. 28, 2010); see also Kayess, supra note 1, at 4 (defining the CRPD’s “paradigm shift” as a change in attitudes and approaches to persons with disabilities).}

\textsuperscript{28} Arbour, supra note 27; see also Kayess, supra note 1, at 12 (revealing that this paradigm shift was embodied in the CRPD negotiations, which involved the participation of a record number of persons with disabilities).

\textsuperscript{29} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 19; see also Kayess supra note 1, at 29 (equating the right to live and participate in the community with the right to liberty).
with disabilities. According to, persons with disabilities must have access to community-based living options and the opportunity to choose their place of residence.

Article 12 also emphasizes the goals of participation and inclusion in the community. Under article 12 of the CRPD, state parties recognize the right of persons with disabilities

30 See Convention on the Rights of Persons with Disabilities, note 6, art. 19; see also Unplugged: Faces of Social Exclusion in Croatia, supra note 2, at 2 (defining social exclusion or segregation as “the weakening of the relationship between individuals and their community”).


32 See, e.g., Human Rights Watch UPR Submission on Croatia, supra note 7 (suggesting that the right to live in the community is linked to the right of legal capacity).
to enjoy full legal capacity on an equal basis with others.\footnote{See Convention on the Rights of Persons with Disabilities, supra note 6, art. 12; see also Kanter, supra note 21, at 560-561 (emphasizing the importance of equal recognition before the law by detailing decades of abuse of the guardianship system with respect to persons with disabilities).} Any measures used to reduce legal capacity must have adequate safeguards to prevent abuse.\footnote{See Convention on the Rights of Persons with Disabilities, supra note 6, art. 12; see also Ulrike Buschbacher Connelly, Comment, Disability Rights in Cambodia: Using the Convention on the Rights of People with Disabilities to Expose Human Rights Violations, 18 Pac. Rim L. & Pol’y J. 123, 132 (2009) (acknowledging that article 12 permits for the suspension of legal capacity in instances when an individual is incapable of making rational decisions about his or her daily life).} Limitations on a person’s legal capacity must be “narrowly tailored, reviewed periodically, and be for the shortest time possible.”\footnote{Human Rights Watch UPR Submission on Croatia, supra note 8; accord Open Society Mental Health Initiative, Access to Education and Employment for People with Intellectual Disabilities: An Overview of the Situation in Central and}
plenary guardianship, state parties must take appropriate measures to support persons with disabilities in exercising their legal capacity.\(^{36}\)

The CRPD further promotes integration and participation through articles 24 and 27.\(^{37}\) Under article 24, state parties

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\(^{36}\) See Convention on the Rights of Persons with Disabilities, supra note 6, art. 12; accord Kanter, supra note 21 (asserting that article 12 was incorporated in the CRPD to encourage persons with disabilities to seek support, which they often fail to do for fear of full incapacitation).

\(^{37}\) See Convention on the Rights of Persons with Disabilities, supra note 6, arts. 24, 27; see also Kayess, supra note 1, at 16 (recognizing that articles 24 through 28 place an “over-riding emphasis” on the inclusion and participation of persons with disabilities).
must ensure an inclusive education system.\textsuperscript{38} Students may no longer be excluded from the general education system on the basis of their disability; persons with disabilities must receive individualized support, within the general education system, to facilitate their social and academic development.\textsuperscript{39} Article 27 of the CRPD establishes the right of persons with

\textsuperscript{38} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 24 (mandating that persons with disabilities must have access to schools on an equal basis with others in the communities in which they reside); see also Gerard Quinn, The United Nations Convention on the Rights of Persons with Disabilities: Toward a New International Politics of Disability, 15 \textit{Tex. J. C.L. & C.R.} 33, 35 (2009) (underlining the significance of article 24 in combating the worldwide “chronic under-education” of children with disabilities and offering statistics that less than two percent of children with a disability attend school).

\textsuperscript{39} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 24 (offering examples of reasonable accommodation in the general education system as: employing and teaching augmentative and alternative means of communication and providing individualized mentoring).
disabilities to work on an equal basis with others.\textsuperscript{40} Pursuant the CRPD, states must promote an inclusive work environment and provide individuals with disabilities the continuing training necessary to facilitate their effective participation in the labor market.\textsuperscript{41}

C. Croatia’s Disability Law

Around the world, persons with intellectual and mental disabilities encounter violations of their basic human rights, \textsuperscript{40} See id. (establishing that the labor market must be “open, inclusive and accessible to persons with disabilities”); \textsuperscript{41} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 27; see also Thomas C. Weiss, Commentary, Disabled World, The Convention on the Right of People with Disabilities (July 23, 2009), available at http://www.disabledworld.com/editorials/political/convention-disabilities.php (last visited Aug. 28, 2010) (interpreting article 27 to require supported employment services such as access to career counseling and vocational training).
and Croatia is no exception.\textsuperscript{42} In Croatia, excessive and forced institutionalization of persons with mental and intellectual disabilities is a paramount concern.\textsuperscript{43} At least 7,000 persons with intellectual and mental disabilities are currently living in long-term residential institutions and these numbers are only projected to increase.\textsuperscript{44} While institutionalization in Croatia remains high, community living options remain relatively

\textsuperscript{42} See, e.g., Human Rights Watch Concerns and Recommendations on Croatia, supra note 31 (illustrating the inhumane and degrading conditions of Croatian mental health institutions).

\textsuperscript{43} See e.g., Poorva Misra, United Nations Development Programme Croatia, Watching From the Sidelines, Aug. 22, 2008, http://www.undp.hr/show.jsp?page=97271 (last visited Aug. 28, 2010) (recounting an incident in a Croatian hospital where a woman gave birth to a baby with Down Syndrome and was immediately given a pamphlet by her doctor encouraging her to place the child in an institution and “forget it had ever been born” and indicating that this occurrence is not uncommon).

\textsuperscript{44} See Human Rights Watch UPR Submission on Croatia, supra note 7 (indicating that there are long waiting lists for many institutions).
The Croatian government continues to deny funding to community-based programs while simultaneously pouring more money into institutional facilities. In Croatia, persons living in these institutions are typically isolated from society and rarely return to their communities.

In Croatia, at least 8,300 adults with mental and intellectual disabilities are deprived of legal capacity. In

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45 See id. (comparing the nearly 12,000 places in institutions for persons with disabilities to the 250 places in supportive community living programs).

46 See id. (comparing the Government’s 10 million dollar investment in infrastructure for social welfare (much of which was spent on the refurbishment of 44 institutions) with the Government’s refusal to contribute any matching funds to a World Bank project to create community-based social services).

47 See id. (expounding that most individuals living in institutions cannot live somewhere else without a doctor’s evaluation that they are “capable” of doing so).

48 See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (defining legal incapacitation as the process whereby individuals are stripped of the right to make
fact, an overwhelming majority of disabled adults living in institutions are actually placed there by their guardians.\textsuperscript{49} Abuse of the legal capacity system with regards to persons with intellectual and mental disabilities is a chief concern.\textsuperscript{50} The case of \textit{X v. Croatia} is illustrative; in December 2008, the European Court of Human Rights found that Croatia had violated the rights of a mentally disabled woman after the state allowed her daughter to be adopted without the mother’s consent.\textsuperscript{51}

important life decisions as: the right to get married, sign an employment contract, or choose where to live).

\textsuperscript{49} See, e.g., Human Rights Watch UPR Submission on Croatia, \textit{supra} note 7 (disclosing the results of a Human Rights Watch study which found that between 70 to 100 percent of residents in various institutions were under guardianship).

\textsuperscript{50} See id. (suggesting that the guardianship system in Croatia is highly susceptible to corruption and abuse with respect to persons with mental and intellectual disabilities).

\textsuperscript{51} See Human Rights Watch Concerns and Recommendations on Croatia, \textit{supra} note 31 (specifying that the European Court of Human Rights found that Croatia had violated the woman’s right to family life under Article 8 of the European Convention on Human Rights).
Croatian courts arbitrarily stripped the woman of her legal capacity, a measure deemed disproportionate to the woman’s mental illness.\textsuperscript{52} In Croatia, those who are deprived of their legal capacity are nearly always fully and permanently deprived of this right.\textsuperscript{53} While the official law of legal capacity requires a doctor to periodically reevaluate whether an individual is capable of acting on his or her own behalf, in reality, this measure is seldom followed.\textsuperscript{54}

\textsuperscript{52} See id. (indicating that the woman was a diagnosed schizophrenic and averring that Croatia’s actions exceeded what is “necessary in a democratic society” with respect to persons with mental disabilities).

\textsuperscript{53} See Open Society Mental Health Initiative, supra note 35, at 18 (detailing Croatia’s excessive reliance on plenary guardianship); see also Kanter, supra note 21, at 561 (cautioning that plenary guardianship may produce a self-fulfilling prophecy, whereby individuals are incapacitated, and subsequently begin to doubt themselves and believe that they are incompetent to make decisions on their own behalf).

\textsuperscript{54} See Human Rights Watch UPR Submission on Croatia, supra note 7 (contending that doctors rarely conduct periodic review of legal capacity based on a study which found that not a single person
In Croatia, children with intellectual disabilities are almost always segregated to special schools.\(^{55}\) Even children with mild intellectual disabilities are denied access to mainstream education.\(^{56}\) Only a handful of mainstream schools offer individualized support for students with intellectual disabilities.\(^{57}\) Consequently, many children are excluded from local mainstream schools and sent to remote institutions, far-off from their communities.\(^{58}\) Persons with mental and interviewed, who was deprived of legal capacity, was aware of a periodic review of their legal status).

\(^{55}\) See Adams, supra note 3 (describing the quality of education in these special schools as generally “very poor”).

\(^{56}\) See Hammarberg, supra note 2 (contending that while these students are frequently eligible for mainstream schooling, school officials often presume their incapacity).

\(^{57}\) See Adams, supra note 3 (advocating the integration of special educational services in mainstream schools and explaining that students are more apt to succeed when they are supported by teachers with the proper knowledge and skills to work with children with intellectual disabilities).

\(^{58}\) See Watching From the Sidelines, supra note 43 (describing these children as growing up “on the sidelines of a regular
intellectual disabilities disproportionately experience high levels of unemployment.\textsuperscript{59} In Croatia, individuals with disabilities are the “last to get a job and the first to lose it.”\textsuperscript{60} Even those with minor intellectual disabilities face discrimination in the labor market.\textsuperscript{61} In most instances, 

school life” and arguing that the process of uprooting these children from their homes is extremely strenuous for both children and parents).

\textsuperscript{59} See Open Society Mental Health Initiative supra note 35, at 9 (reporting that 40\% of persons with disabilities are employed as compared to 64.5\% of people without disabilities, and that this statistic “merits serious concern”).


\textsuperscript{61} See Adams, supra note 3, at 30 (recognizing that access to employment is exceedingly challenging for persons with disabilities due to Croatia’s struggling economy).
individuals with disabilities are offered little to no support services or vocational training. Of those individuals that do receive vocational training, most receive training for outdated professions or skills which do not correspond to labor market needs. As an alternative to entry into the general labor market, persons with disabilities generally obtain employment in “sheltered workplaces.” Furthermore, because many persons with

62 See, e.g., Open Society Mental Health Initiative, supra note 35, at 19 (highlighting the absence of supported employment services such as job coaches, transportation, assistive technology, and specialized job training in Central and Eastern European countries).

63 See Unplugged: Faces of Social Exclusion in Croatia, supra note 2, at 7,11 (recognizing that such training has little effect in integrating persons with disabilities into mainstream society and calling for programs to update employees with the skills needed to compete in the current labor market).

64 See Open Society Mental Health Initiative, supra note 35, at 19 (defining “sheltered workplaces” as segregated employment environments which only employ individuals with disabilities).
intellectual and mental disabilities are denied legal capacity, this also precludes their opportunity for employment.\textsuperscript{65}

**II. Analysis**

Despite being one of the first countries in the world to ratify the CRPD, Croatia has failed to meet its commitments under the international treaty.\textsuperscript{66} In Croatia, persons with mental and intellectual disabilities continue to encounter discrimination and social exclusion.\textsuperscript{67} By analyzing Croatia’s current disability scheme against the goals and principles of

\textsuperscript{65} See Adams, supra note 3, at 30 (explaining that persons deprived of legal capacity can only be employed if their guardian agrees).

\textsuperscript{66} See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (depicting Croatia as an early leader of the CRPD and criticizing the state for its “unfulfilled promises” to persons with mental and intellectual disabilities).

\textsuperscript{67} See Adams, supra note 3, at 6 (attributing this struggle, in part, to the lack of awareness regarding the rights of persons with mental and intellectual disabilities to live and participate in the community).
the CRPD, it is clear that Croatia’s policies regarding institutionalization, legal capacity, education, and employment contravene the core principles of the treaty.\(^{68}\)

**A. Croatia’s Trend Toward Institutionalization Violates Article 19 of the CRPD Because it Furthers Social Exclusion and is Incompatible with Community-Based Living**

Croatia’s interpretation of Article 19 violates the CRPD because it allows “confinement” in a residential institution to be classified as a community living option.\(^{69}\) While the language of article 19 does not expressly prohibit institutional living, a focus on institutionalization undoubtedly contravenes the goals of article 19 and the CRPD in general.\(^{70}\) Under article 19, __________________________________________

\(^{68}\) See discussion infra Part II.A-D (challenging Croatia’s excessive reliance on institutionalization and plenary guardianship and the barriers to equal access of education and employment).


\(^{70}\) See Convention on the Rights of Persons with Disabilities, supra note 6, art. 19; see also Kayess, supra note 1, at 29
state parties commit to recognizing the right of persons with disabilities to “choose their place of residence” and “live on an equal basis with others.”\textsuperscript{71} Individuals with disabilities must have access to community support services, including “personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.”\textsuperscript{72} As institutionalization itself invariably causes social exclusion because it removes individuals from the community, a focus on institutional living clearly contravenes (arguing that article 19 operates as a prohibition on institutional forms of living).

\textsuperscript{71} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 19. But see Open Society Mental Health Initiative, supra note 35, at 10 (revealing that many parents are forced to institutionalize their children because of a lack of community-based support services).

\textsuperscript{72} See Convention on the Rights of Persons with Disabilities, supra note 6, art. 19; see also Open Society Mental Health Initiative, supra note 35, at 10 (appreciating that without community support services, even those who are not confined to institutions would nevertheless face social exclusion for lack of support to facilitate their participation in the community).
the goal of social integration and participation.\textsuperscript{73} Institutionalization only furthers social isolation, dependency, and exclusion.\textsuperscript{74}

Nevertheless, Croatia continues to institutionalize a large portion of its disabled population.\textsuperscript{75} Since ratification of the CRPD, the Croatian Government has not taken adequate steps to deinstitutionalize and expand community living programs.\textsuperscript{76}

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\textsuperscript{73} See Witness, supra note 3 (claiming that “while life in an institution can be made more bearable, it can never be made into freedom and participation”).
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\textsuperscript{74} See Unplugged: Faces of Social Exclusion in Croatia, supra note 2, at 10 (arguing that institutionalization itself causes exclusion because institutions are often located in remote settings, away from family members).
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\textsuperscript{75} See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (observing that while the general trend in Europe is toward community-based services, the number of persons with disabilities living in Croatia’s institutions is growing).
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\textsuperscript{76} See Human Rights Watch UPR Submission on Croatia, supra note 7 (revealing that even the largest and best established community
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Instead, Croatia continues to pour more money into institutions, which directly contradicts the goal of promoting the full inclusion and participation of persons with disabilities.\(^77\) Persons living in these institutions become isolated from society and are unable to ever exercise their fundamental right to live in the community.\(^78\) Most individuals living in institutions cannot live somewhere else without a doctor’s evaluation that they are “capable” of doing so.\(^79\) This characteristic of institutional living clearly violates the living program has not received permission from the Croatian government to expand the program since 2006).\(^77\) See id. (opposing Croatia’s impending plans to build or replace at least three more institutions in the next several years and arguing that such projects directly contradict the right to live in the community).\(^78\) See id. (recognizing that few persons with intellectual disabilities ever transition back into their communities).\(^79\) See id; see also Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (observing that the system of institutionalization in Croatia “makes it easy for people to be institutionalized and hard for them to get out”).
requirement that persons with disabilities “choose their place of residence” and are “not obliged to live in a particular living arrangement.” In point of fact, persons living in long-term institutions often spend their lives isolated from society.

Excessive and forced institutionalization can never be compatible with the right to live in the community. While institutionalization is sometimes defended as a form of

80 Convention on the Rights of Persons with Disabilities, supra note 6, art. 19; see also Human Rights Watch UPR Submission on Croatia, supra note 7 (portraying Croatia’s system of institutionalization as “indefinite detention”).

81 See Adams, supra note 3, at 5 (stating that many persons with mental and intellectual disabilities, living in special care homes, special schools and orphanages, spend their entire lives in these institutions).

82 See Convention on the Rights of Persons with Disabilities, supra note 6, art. 19 (explicitly stating that persons with disabilities are entitled to community support services and are not required to live in a particular living arrangement).
rehabilitation, the rehabilitative effects are uncertain. Moreover, a focus on rehabilitation rather than social inclusion is ultimately inconsistent with the CRPD, which promotes a human rights approach to disability.

B. Croatia’s Guardianship System Violates Article 12 of the CRPD Because the State Does Not Have Adequate Safeguards to Protect the Legal Capacity of Persons with Disabilities

In Croatia, individuals with mental and intellectual disabilities are routinely deprived of their right to legal capacity in direct violation of article 12. While legal

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83 See also Open Society Mental Health Initiative, supra note 35, at 10 (presenting the results of an in-depth study of residential institutions which found that staff members seldom offer residents rehabilitation and therapy).

84 See discussion supra Part I.A (discussing the movement away from pre-CRPD instruments which embraced a medical model of disability and the shift toward viewing disability as a part of human diversity).

85 See Convention on the Rights of Persons with Disabilities, supra note 6, art. 12; see also Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (asserting that the CRPD requires states to move away from depriving individuals with
incapacitation may be necessary in select instances, Croatia does not have enough procedural safeguards to prevent the arbitrary deprivation of legal capacity. As per article 12 of the CRPD, any limitations on a person’s legal capacity must be narrowly tailored, apply for the shortest period possible, and must be subject to regular review by an impartial authority or judicial body. Croatia’s current legal capacity system clearly mental and intellectual disabilities of the right to make decisions on their own behalf).

See Connelly, supra note 34, at 132 (conceding that legal incapacitation may be necessary in instances where an individual cannot handle their financial affairs or provide for their basic needs).

See Convention on the Rights of Persons with Disabilities, supra note 6, art. 12 (establishing safeguards to ensure that any limitation to legal capacity is proportionate to the person’s circumstances); see also Kanter, supra note 21, at 562 (asserting that these conditions were adopted to balance the individual’s interest in autonomy and self-determination with the state’s legitimate interest in ensuring that its citizens are capable of exercising legal capacity).
defies these obligations. For one, legal capacity is not withheld for the shortest time possible; in Croatia, official statistics show that individuals with disabilities almost never regain their right to legal capacity. This failure is largely due to Croatia’s haphazard system of periodic review. Although Croatian law requires a doctor to review the legal capacity determination every three years, this procedure is rarely

88 See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (arguing that since ratification of the CRPD, Croatia has not taken adequate measures to comply with article 12, particularly failing to assist persons with disabilities in making their own decisions).

89 See Human Rights Watch UPR Submission on Croatia, supra note 7 (explaining that individuals who are denied legal capacity, are almost always deprived fully and permanently).

90 See id. (explicating that the law on legal capacity in Croatia requires doctors to reevaluate the denial of legal capacity every three years, yet doubting whether this procedure is actually followed).
followed. In effect, once removed, legal capacity is rarely restored.

The case of X v. Croatia illustrates the gross deprivation of rights and bleak reality for persons with mental and intellectual disabilities. Under article 12, state parties must assist persons with disability in exercising their legal capacity.

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91 See id. (arguing that even if doctors in Croatia do in fact periodically review legal status, a doctor’s evaluation without the awareness of such review by the individual whose capacity is being determined and without a subsequent review by a court, is insufficient in providing the necessary safeguards to protect the right to legal capacity).

92 See Open Society Mental Health Initiative, supra note 35, at 18 (stating that both the United Nations and the Council of Europe have expressed concerns regarding the potential for abuse through the use of guardianship).

93 See World Report 2010 - Croatia, supra note 69 (illustrating how Croatia’s flawed guardianship system puts persons with intellectual and mental disabilities at high risk of rights abuses).
capacity. Yet despite ratification of the CRPD, Croatia continues to arbitrarily deny legal capacity and withhold assistance. In X v. Croatia, rather than providing support in exercising legal capacity, the Croatian courts stripped a woman of all her legal rights. The European Court of Human Rights held that this measure was not proportionate to the woman’s mental illness, thus further exposing Croatia’s violation of the proportionality requirement of article 12. Croatia violates

94 See Kanter, supra note 21, at 563 (construing article 12 as requiring states to cease the practice of incapacitation and instead, provide support to promote autonomy, dignity, and independence).

95 See Adams, supra note 3, at 7 (observing that Croatia’s current guardianship system does not have a supported decision-making system in place).

96 See Human Rights Watch Concerns and Recommendations on Croatia, supra note 31 (criticizing this extreme measure and recommending that the state amend its law on legal capacity to ensure that persons with disabilities are not exposed to inhumane and degrading treatment).

97 See id.; see also Convention on the Rights of Persons with Disabilities, supra note 6, art. 12 (requiring the denial of
article 12 of the CRPD and denies persons with mental and
intellectual disabilities their vital right to make important
decisions on their own behalf.\textsuperscript{98}

\textbf{C. Croatia Violates Article 24 of the CRPD Because the State
Does Not Offer an Adequate and Inclusive Education System
For Persons with Disabilities}

The routine segregation of individuals with intellectual
disabilities into special schools is a clear violation of
article 24 of the CRPD.\textsuperscript{99} Under article 24, state parties ensure
that persons with disabilities are not excluded from the general
education system on the basis of their disability.\textsuperscript{100}

\begin{enumerate}
\item legal capacity to be “proportional and tailored to the person’s
circumstances”).
\item See Kanter, supra note 21, at 561 (stating that legal
deprivation is sometimes referred to as “civil death”).
\item See Hammarberg, supra note 2 (arguing that specialized
schooling is the norm for children with intellectual
disabilities.
\item See Convention on the Rights of Persons with Disabilities,
supra note 6, art. 24 (explicitly stating that persons with
disabilities have a right to free primary education).
\end{enumerate}
Nevertheless, Croatia continues to deny individuals with disabilities access to mainstream schools.\(^{101}\) This denial is both a product of social stigma and the state’s failure to provide individualized support for children with disabilities.\(^{102}\) Although article 24 requires state parties to provide students with reasonable accommodation and individualized support, Croatia’s mainstream schools lack these features.\(^{103}\) The absence

\(^{101}\) See Hammarberg, supra note 2 (noting that even children with mild intellectual disabilities are denied access to mainstream schools); see also Open Society Mental Health Initiative, supra note 35, at 12 (qualifying that while children with intellectual and mental disabilities may have the right to attend mainstream schools, inadequate accommodation effectively denies these individuals access).

\(^{102}\) See Adams, supra note 3, at 15 (listing the absence of educational counseling, speech therapy, physiotherapy, and qualified staff, as several major factors preventing integration in mainstream classrooms).

\(^{103}\) See Convention on the Rights of Persons with Disabilities, supra note 6, art. 24; see also Open Society Mental Health Initiative, supra note 35, at 14 (noting that specialized services are only available in special schools).
of specialist assistance in mainstream schools pushes children toward special schools, and away from their homes and communities.\textsuperscript{104} Another serious problem is that these special schools often offer a substandard education, which in turn, leaves these individuals unprepared for any type of employment.\textsuperscript{105} In Croatia, these special schools rarely enhance academic and social development or provide the “quality”

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\textsuperscript{104} See Hammarberg, supra note 2 (portraying special schools as a segregated system which marks the beginning of lifelong social exclusion); see also Office of the High Commissioner for Human Rights, The Human Rights Dimension of Disability, http://www.ombudsman.hr/dodaci/UPR_NHRI_Coalition_Report.pdf (arguing that it is unacceptable to send children with disabilities to special schools because they cannot be educated in their local communities).

\textsuperscript{105} See Open Society Mental Health Initiative, supra note 35, at 16 (revealing the results of a 2001 Hungary report which found that more than one third of persons with intellectual disabilities aged 15 or over did not finish the first year of primary school and that employment prospects for these individuals were thus dismal).
\end{quote}
education envisioned by the drafters of the CRPD. Instead, these schools serve to further isolate and disadvantage individuals with mental and intellectual disabilities.

D. Croatia Violates Article 27 of the CRPD Because the State Has Made Virtually No Progress in Promoting Adequate Employment Opportunities for Persons with Disabilities.

Although article 27, recognizes the right of equal access to employment, persons with disabilities experience widespread

106 See Convention on the Rights of Persons with Disabilities, supra note 6, art. 24 (requiring states to ensure that persons with disabilities have access to quality education on an equal basis with others); see also Open Society Mental Health Initiative, supra note 38, at 15 (revealing the inadequacy of education in Croatia’s special schools as compared to other countries in the region).

107 See Adams, supra note 3, at 5 (stating that many persons with mental and intellectual disabilities, living in special care homes, special schools and orphanages, spend their entire lives in these institutions).
discrimination in the labor market.\textsuperscript{108} Croatia has done little to improve the employment opportunities of persons with disabilities and bring its policies in line with its obligations under the CRPD.\textsuperscript{109} In Croatia, persons with intellectual and mental disabilities are exceedingly denied access to mainstream employment.\textsuperscript{110} While countless individuals with disabilities are

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\textsuperscript{108} \textit{See} Convention on the Rights of Persons with Disabilities, \textit{supra} note 6, art. 27; \textit{see also} Leutar \textit{supra} note 60, at 82 (investigating the attitudes of employers and finding that while many agreed that persons with disabilities should be integrated into the mainstream workforce, most were uncertain whether they would employ persons with disabilities in their own companies).
\end{quote}

\begin{quote}
\textsuperscript{109} \textit{See} Bratvokic, \textit{supra} note 60 (discussing the Government’s failure to promote the employment of persons with disabilities through legal requirement or tax incentives).
\end{quote}

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\textsuperscript{110} \textit{See} Open Society Mental Health Initiative, \textit{supra} note 38, at 17 (criticizing Croatia’s procedure for determining whether an individual is capable of working independently because the assessment is based on an individual’s IQ, which may not be relevant to the individual’s ability to perform a particular job).
\end{quote}
capable of performing, many are simply denied entry because of their disability.\textsuperscript{111}

A second major barrier to employment is the lack of supported employment schemes.\textsuperscript{112} As discussed above, state parties to the CRPD recognize their duty to enable persons with disabilities to access and maintain employment through various support services.\textsuperscript{113} In denying these services, Croatia clearly

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\textsuperscript{111} See generally Adams, supra note 3, at 33 (pointing to successes of supported employment services in Croatia to demonstrate that individuals with intellectual disabilities are capable of contributing to the open labor market).

\textsuperscript{112} See Adams, supra note 3, at 17 (admitting that while Croatian NGOs have recently launched a successful supported employment program for persons with intellectual disabilities, there are only a handful of these services in the region); accord Bratkovic, supra note 60 (stating that less than 40 persons with intellectual disabilities receive supported employment services).

\textsuperscript{113} See discussion infra Part I.C (discussing states’ obligation to ensure that persons with disabilities have access to guidance and continuing training); see also Bratkovic, supra note 60
violates article 27 and effectively disables persons with disabilities from obtaining access to mainstream employment.\textsuperscript{114}

Generally, employment for persons with disabilities is available in the form of sheltered workplaces.\textsuperscript{115} While sheltered workplaces provide an important avenue for persons with disabilities to gain employment and access to long-term ongoing support, these workplaces are segregating settings, which only further social exclusion.\textsuperscript{116} Although the CRPD does not (offering a step-by-step model for implementing support services in Croatia).

\textsuperscript{114} See Open Society Mental Health Initiative, supra note 38, at 17 (detailing the importance of these services in permitting persons with disabilities to become competitive employees in the labor market).

\textsuperscript{115} See Bratkovic, supra note 60 (revealing that only a small percentage of persons with intellectual disabilities are employed in the open labor market, while the vast majority obtain employment in sheltered conditions).

\textsuperscript{116} See generally Bratkovic, supra note 60 (detailing several benefits of sheltered employment). But see Adams supra note 3, at 5 (criticizing efforts to provide sheltered workplaces as
expressly prohibit sheltered workplaces, Croatia’s excessive reliance on these institutions to employ its disabled population is contrary to the general principles of equality of opportunity and participation and inclusion in society.\textsuperscript{117}

\textbf{III. Recommendations}

Croatia must focus on building a more inclusive society.\textsuperscript{118} In order to meet the goals and principles of the CRPD, Croatia ultimately contributing to the isolation of persons with disabilities).

\textsuperscript{117} See Bratkovic, supra note 60 (addressing the drawbacks of sheltered work environments which fail to provide equal opportunities or prepare employees for the open labor market because they offer positions where employees spend a significant amount of time doing nothing and perform work activities that are technologically obsolete).

\textsuperscript{118} See Unplugged: Faces of Social Exclusion in Croatia, supra note 2, at 1 (arguing that discrimination on the basis of disability violates the basic human right to become an active and productive member of society and develop a sense of belonging in the community).
must ensure the full participation and integration of persons with disabilities; “Any reshaping of attitudes would be the gradual result not of the words or ideas in the laws, but of bringing people with disabilities...into our schools and workplaces...where they not only have an absolute right to be, but where we have an obligation...to welcome them as equals.”

A. Developing a Plan for Deinstitutionalization and Community-Based Alternatives

In order to meet the minimum requirements of the CRPD, Croatia must develop a plan for deinstitutionalization. Croatia must first and foremost, alter its interpretation of article 19, which erroneously permits residential institutions to be characterized as community living options. In reading article 19, Croatia should interpret the right to live in the community

119 See Globalizing a Response to Disability Discrimination, supra note 6, at 442.

120 See Human Rights Watch Concerns and Recommendations on Croatia, supra note 31 (noting that Croatian NGO’s have pressured the government to amend the translation of article 19).
as a movement away from institutional living.\textsuperscript{121} Croatia must abandon its trend of institutionalization and follow the example of other European counties that are moving toward community-based care.\textsuperscript{122} Although the lack of financing for community-based living is a major challenge, the solution entails a shift in financing from institutions to community-based options.\textsuperscript{123} In

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\textsuperscript{121} See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (arguing that the right to live in the community rather than an institution is a significant aspect of the CRPD).
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\textsuperscript{123} See Adams, supra note 3, at 36 (acknowledging that inconsistent government funding for community-based living is a major barrier and that funding usually comes from donations or one time government grants).
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promoting community-based living, Croatia must decrease investment in institutions, devote more resources to supportive community living programs, and allow persons with disabilities to choose their place of residence.\textsuperscript{124} Even where individuals remain institutionalized, much stronger ties with local communities is necessary.\textsuperscript{125}

B. Reforming the Law on Legal Capacity to Prevent Abuse and Promote a System Where Individuals with Mental and Intellectual Disabilities are Supported in Making Decisions

The power to make decisions on one’s own behalf is a fundamental human right.\textsuperscript{126} In order to comply with article 12 of the CRPD, Croatia must significantly reform its law on legal capacity.

\textsuperscript{124} See Human Rights Watch UPR Submission on Croatia, supra note 7 (recommending that Croatia adopt a plan that includes closing institutions).

\textsuperscript{125} See id. (recommending the establishment of government-run programs that can provide care in the community for individuals living in institutions).

\textsuperscript{126} See Open Society Mental Health Initiative, supra note 35, at 19 (asserting that once a person loses his or her right to legal capacity, they are no longer recognized as an individual before the law).
capacity. With regards to persons with intellectual and mental disabilities, emphasis should be placed on assistance rather than deprivation. Individuals with intellectual and mental disabilities should be supported in making life decisions, rather than instantly deprived of legal capacity. In Croatia, the legal capacity system must be modified to ensure that individuals are no longer permanently and fully deprived of legal capacity and that any limitations are proportionate to the

127 See Human Rights Watch UPR Submission on Croatia, supra note 7 (recommending safeguards to prevent abuse of the guardianship system and calling for measures to ensure that any requirements regarding legal capacity apply to all individuals regardless of disability).

128 See Croatia: Unfulfilled Promises to Persons with Disabilities, supra note 9 (arguing that legal deprivation only serves to disempower individuals and results in adults with disabilities being treated like young children).

129 See Adams, supra note 3, at 36 (averring that the guardianship system should be reformed based on the presumption that persons with intellectual and mental disabilities can make decisions for themselves).
So as to prevent abuse of the guardianship system, Croatia must legislate safeguards such as periodic judicial review of legal capacity and the right of individuals with disabilities to challenge the deprivation of legal status before a judge.

C. Ensuring Equal Access to Education and Employment by Offering Support Services

Education and employment go hand-in-hand. In order to improve access to employment for persons with disabilities,

130 See Open Society Mental Health Initiative, supra note 35, at 19 (promoting the implementation of partial guardianship, whereby a guardian is appointed to make decisions about only specific and predetermined issues.

131 See Human Rights Watch UPR Submission on Croatia, supra note 7 (noting that Croatia’s current system of legal capacity lacks judicial oversight and only requires review by a doctor every three years).

132 See Adams, supra note 3, at 15 (identifying the lack of access to education as one of the greatest barriers to employment for persons with disabilities).
Croatia must first equalize opportunities in education.\(^\text{133}\) This ultimately entails discarding the system of routine segregation and evaluating students on a case-by-case basis.\(^\text{134}\) Students with only mild disabilities should not be assigned to special schools, but rather provided support services so that they may succeed in mainstream schools.\(^\text{135}\) Furthermore, students with more severe intellectual disabilities should not be relegated to remote areas; allocating funds toward new local schools must be a priority.\(^\text{136}\) Croatia must also closely monitor institutions to

\(^{133}\) See generally Open Society Mental Health Initiative, supra note 35 (highlighting the inadequacy of special schools).

\(^{134}\) See id. at 2 (qualifying that this system will not work unless Croatia adheres to its international obligations and provides students with individualized support).

\(^{135}\) See Watching From the Sidelines, supra note 43 (advising that attending regular schools are more likely to have a positive impact on children’s mental and emotional development).

\(^{136}\) See Adams, supra note 3, at 37 (recommending that legislation be amended to give all children the opportunity to be educated in their local communities).
ensure that children with intellectual and mental disabilities receive access to adequate education.\textsuperscript{137}

While ineffective education is a principal barrier to employment, additional reforms are needed to boost employment opportunities and comply with article 27.\textsuperscript{138} Once individuals obtain employment, they must have continued access to support services and up-to-date vocational training to give them an opportunity to succeed in the workplace.\textsuperscript{139} Additionally, persons with disabilities should not be routinely segregated to

\textsuperscript{137} See Open Society Mental Health Initiative, \textit{supra} note 35, at 16 (exposing that there is typically no inspection of educational quality in institutions and that many institutions do not have any educational programs at all).

\textsuperscript{138} See \textit{id.} at 17 (proposing transitional services to assist persons with disabilities in transitioning from education to employment).

\textsuperscript{139} See Leutar \textit{supra} note X, at 81 (recognizing that while such services can be costly to an employer, the Croatian Government frequently subsidizes the costs of instruction and training for persons with disabilities).
sheltered workplaces. Although these workplaces provide long-term employment and a range of support services, these institutions effectively serve to exclude persons with disabilities from the rest of society.

**Conclusion**

Croatia’s current disability law violates the core goals and principles of the CRPD. In Croatia, persons with intellectual and mental disabilities face the greatest deprivation of human rights. Croatia must take active and effective measures to improve the quality of life for persons with mental and intellectual disabilities and prevent human rights abuses. This ultimately means developing a plan for

140 **See Adams supra**, note 3, at 33 (challenging the misconception that persons with intellectual and mental disabilities cannot contribute to the labor force).

141 **See generally** Open Society Mental Health Initiative, **supra** note 35 (noting the dual goals of improving access to employment for persons with disabilities and achieving their social inclusion).
Erica Shnayder

deinstitutionalization, enacting adequate safeguards to prevent abuse of guardianship, and ensuring equal access to education and employment. Croatia must meet its obligations to the international community and to its citizens and bring persons with mental and intellectual disabilities from the margins of society and into their communities.