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Circassian Right of Return: “Putin The Terrible or Putin The Enlightened?”

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CIRCASSIAN RIGHT OF RETURN: “PUTIN THE TERRIBLE OR PUTIN THE ENLIGHTENED?”

MASON WILEY*

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I. INTRODUCTION

Circassians are an indigenous ethnic group that originates in the northwestern Caucasus Mountains.¹ Throughout the nineteenth century, the Russian Empire enacted a policy to eradicate Circassians from their ancestral homelands, effectively pushing almost all surviving Circassians throughout the diaspora.² Russia recently

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1. *See generally* KADIR I. NATHO, CIRCASSIAN HISTORY 17-19 (2009) (discussing the origins of the Circassians and arguing that the Caucasus is their homeland).

2. Firuz Kazemzadeh, *Russian Penetration of the Caucasus*, in RUSSIAN

hosted the 2014 Winter Olympics in Sochi, the heart of Circassian ancestral lands.³ Many Circassians have expressed an interest in returning to Circassia, particularly Circassians fleeing the conflict in Syria.⁴

Under article 12(4) of the International Covenant on Civil and Political Rights (“ICCPR”), Russia has an obligation to allow Circassians the right of return.⁵ Many Circassians, particularly refugees from Syria, wish to utilize Russia’s Compatriot Law (a program to encourage Russians throughout the diaspora to return to Russia).⁶ However, a recent determination by Russian officials that Circassians are not considered compatriots under the law has prevented Circassian right of return.⁷ Russia should meet its obligations under the ICCPR’s article 12(4) to allow Circassians the right of return by either amending the Compatriot Law or creating a new law to repatriate Circassians.

Section II of this comment will provide a history of the Circassian people, including Russian policy to eradicate and expel Circassians from their ancestral homelands throughout the nineteenth century.⁸ It will then go over the Russian government’s Compatriot Law and a recent decision by the Russian government that Circassians are not

IMPERIALISM FROM IVAN THE GREAT TO THE REVOLUTION 239, 261-63 (2000).

3. See NATHO, *supra* note 1, at 283 (describing Circassian history in the fifth century and including the Sochi district).

4. Valery Dzutsev, *Adygea Can Accommodate Hundreds of Circassian Refugees from Syria*, JAMESTOWN FOUND. (Mar. 4, 2013), http://www.jamestown.org/regions/middleeast/single/?tx_ttnews%5Bpointer%5D=6&tx_ttnews%5Btt_news%5D=40538&tx_ttnews%5BbackPid%5D=676&cHash=30ecf223ce30da33474eaaf084f0f11a#.VBxvOi5dVuo [hereinafter Dzutsev, *Adygea*] (discussing how dozens of Circassian Syrians families have repatriated to the Adygea province (a part of old Circassia) and how thousands of families still wish to emigrate).

5. International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 12(4), U.N. GAOR, 21st Sess. Supp. No. 16, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICCPR].

6. See Dzutsev, *Adygea*, *supra*, note 4; see also Alexander Zhuravsky & Olga Vykhovanets, *Compatriots: Back to the Homeland*, RUSSIAN INT’L AFFAIRS COUNCIL (May 31, 2013), http://russiancouncil.ru/en/inner/?id_4=1908#top (describing the migration as a “homecoming”).

7. *Syrian Circassians Do Not Come Under the Term of “Compatriot”, the Ministry of Regional Development Considers*, CAUCASIAN KNOT (Jan. 21, 2013), <http://eng.kavkaz-uzel.ru/articles/24650/> [hereinafter *Syrian Circassians*].

8. See *infra* Section II.

compatriots under the law.⁹ The comment will then discuss the right of return as a binding principle of international law that can continue through subsequent generations of an outcast people.¹⁰

This comment argues that Russia is frustrating Circassian right of return in violation of articles 12(4) and 2(1) of the ICCPR. Section III will analyze the Circassian right of return under the ICCPR and legal barriers that could otherwise prevent Circassian right of return.¹¹ It will then discuss how the Russian Compatriot Law fails to meet Russian obligations under article 12(4) of the ICCPR.¹² In addition, Russia's subsequent amendments to the Compatriot Law to limit the scope of compatriot and decision to deny Circassian right of return constitutes a discriminatory practice prohibited by article 2(1) of the ICCPR. Finally, Section IV will recommend how Russia can fulfill its obligations by providing measures to allow Circassian return.¹³ For instance, Russia could amend the Compatriot Law to allow Circassian return, accept Circassians as Russian compatriots under the international law of succession, or create a new law that specifically targets Circassians for return to the ancestral homelands.

II. BACKGROUND

The background will describe Circassian history in the northwest Caucasus region and ultimate removal under Russian imperialism during the Caucasian War from 1817-1864. It will then explain the Russian Compatriot Law, Syrian Circassian refugee attempts to use the law for repatriation, and Russia's determination that Circassians are not compatriots under the law. Finally, it will present the history and current precedent for right of return under articles 12(4) and 2(1) of the ICCPR.

A. CIRCASSIAN HISTORY

The term "Circassian" refers to members of an indigenous ethnic group from the northwestern region of the Caucasus Mountains,

9. *See infra* Section II(B).

10. *See infra* Section II(C).

11. *See infra* Section III(A)-(B).

12. *See infra* Section III(C).

13. *See infra* Section IV.

which borders Russia, Georgia, and the Black Sea.¹⁴ It is a distinct group with its own culture and language.¹⁵ Circassian mythology, known as the Nart Epics, predates the Bronze Age and provides thousands of years of Circassian history and culture originally passed down as oral tradition before being recorded in Circassian texts.¹⁶ For most of their history, Circassians enjoyed relative autonomy as tribal groups connected through custom and culture, which regularly interacted with neighbors through trade, noble marriages, and war.¹⁷

Throughout the eighteenth century, Russia increasingly viewed access to the Caspian and Black Sea as an invaluable trade route.¹⁸ As the Ottoman and Persian Empires' power declined, Russia seized the opportunity to grow its influence in the Caucasus region.¹⁹ Russia's empire building was largely successful by embracing aristocratic authorities to absorb regions into the Empire.²⁰ Farming lowlands generally had concentrated central power structures that provided Russia with instant authority over regions.²¹ However, Russia ran into difficulties in areas with a diffused power structure, such as Circassian tribal authorities.²² As the Russian Empire encompassed the lowlands of the Caucasus region, tribal groups in

14. NATHO, *supra* note 1, at 283 (including Sochi, Russia, the home of the 2014 Winter Olympics, as part of Circassian lands).

15. *Id.* at 42-43 (discussing Circassian language, also known as Abkhazo-Adygha language, and how Circassian is related to other Caucasian languages, and noting the distinctive mythological prayers).

16. *Id.* at 21-24 (providing that the mythology constantly evolved to allow for new laws and customs as late as the Middle Ages).

17. *See generally id.* at 88-99 (detailing Circassian relations with other Caucasian groups, Ottomans, Persians, Russians, Mongols, Arabs, and even Italians).

18. *See id.* at 266-67 (describing Russian frustration with Caucasian groups that disturbed Russian plans to open trade routes between India and Europe through the Caucasus).

19. *Id.* at 269 (noting that the Russian leadership at the time saw the area as right to be reclaimed from the Persian and Ottoman empires).

20. CHARLES KING, *THE GHOST OF FREEDOM: A HISTORY OF THE CAUCASUS* 38 (2008) (providing that the Russians provided titles and lands to aristocrats in exchange for loyalty to expand the empire).

21. *Id.* (noting that, unlike the highlands, these regions had established hierarchical power structures which were conducive to their integration into the Russian imperial system).

22. *Id.* at 36-37 (providing that Russia also had difficulties with other groups in the Caucasus mountains, including Lezgis, Avars, Dagestanis, and Chechens).

the mountains were increasingly viewed as a security threat.²³

Russia originally created defensive lines along the Caucasus Mountains to defend the lowlands from tribal incursion.²⁴ After a war and peace treaty with Crimea in 1774, Russia assumed control of the Caucasus and attempted to subdue it.²⁵ A war with Chechens, who opposed Russian rule in 1785, led Russia to switch to an offensive position, which included massacres of local populations and large-scale destruction of crops.²⁶ The conquest of the Caucasus only grew in ferocity under the Russian Commander Ermolov throughout much of the nineteenth century.²⁷ Ermolov regularly used strategies of “wanton destruction of property, mass deportation, and indiscriminate killing.”²⁸ After Ermolov’s dismissal in 1827, Russia continued to follow his policies, culminating in the near total destruction of the Circassian population by the official end of the war in 1864.²⁹

The tactics used to overtake Circassian lands can only be described as genocidal.³⁰ Circassian unwillingness to adhere to Russian rule led Russia to systematically rid the northwest Caucasus Mountains of Circassians.³¹ Russian troops combed every part of

23. *Id.* at 39 (detailing Russia’s position as primarily defensive, with the erection of a series of forts, watchtowers, and roads to prevent raiding originating from the direction of the mountains).

24. *See id.* at 40-41 (describing Russia’s use of Cossacks as border guards for their ability to adapt to local customs).

25. Kazemzadeh, *supra* note 2, at 246 (finding that the treaty provided Russian annexation of Karbada and de-facto control of the Caucasus; however, this provision was viewed as illegitimate by most Caucasians).

26. *Id.* at 247.

27. KING, *supra* note 20, at 45-46 (describing his career as one marked with a series of wars of conquest in the upland Caucasus).

28. *Id.* at 45-46, 49 (stating that when criticized for his brutal tactics by imperial observers, Ermolov replied, “Gentleness would be viewed as a sign of weakness, and every act of cruelty on the part of Russian forces would only increase their respect in the eyes of the Muslims of the mountains.”).

29. Kazemzadeh, *supra* note 2, at 261; *see also* KING, *supra* note 20, at 46.

30. Kazemzadeh, *supra* note 2, at 261 (arguing that Russia’s official and systematic mass killings and expulsions of Circassians during the Caucasian wars as a specific ethnicity indicates genocide); *see, e.g.*, KING, *supra* note 20, at 12, 14, 16, 58 (finding that Russian policies included enslavement of Circassians to be raised in Russian homes as Christians, which is also a form of genocide).

31. Kazemzadeh, *supra* note 2, at 261 (quoting a foremost Russian political figure at that time, Grand Duke Mikhail, who stated “the people, after sacking their

Circassia to push the surviving population to the Black Sea for forced immigration to Turkey.³² Captured Circassian women and children were often sold to lowland Caucasus settlers to be raised as Christians, or to Ottoman harems as slaves.³³ Russia resettled vacated lands with loyal settlers, who quickly clear-cut forests, changing the character of the landscape forever.³⁴ By the end of the war in 1864, almost all Circassian tribal groups were either killed or expelled from the lands they inhabited for millennia.³⁵

B. THE RUSSIAN COMPATRIOT LAW

Spurred by a declining population, Russia enacted programs starting in the 1990s to encourage Russian citizens abroad, or former Russians and their ancestors, to repatriate.³⁶ However, even after numerous amendments, the definition of compatriot under the Compatriot Law caused considerable confusion for both those hoping to repatriate and officials administering the program.³⁷ For instance, a 2010 handbook for the so-called Compatriot Law defines compatriots as either individuals, or the decedents of individuals, who emigrated from any territory within the current Russian Federation.³⁸ The temporal scope includes emigrants who left Russia

villages for the tenth time, clung to old places. We could not retreat from the task that had been initiated and abandon the subjugation of the Caucasus just because the Mountaineers did not want to submit. It was necessary to exterminate half of the Mountaineers to compel the other half to lay down its arms.”).

32. *Id.*

33. KING, *supra* note 20, at 58-59.

34. *Id.* at 75.

35. *See id.* at 94-95.

36. *See* Zhuravsky & Vykhovanets, *supra* note 6; *see also* Clifford J. Levy, *Its Population Falling, Russia Beckons its Children Home*, N.Y. TIMES, Mar. 21, 2009, http://www.nytimes.com/2009/03/22/world/europe/22believers.html?page-wanted=all&_r=0 (stating that Russia's population may fall eighteen percent by 2050); *Russia: Information on the State Program for Assisting Compatriots Residing Abroad in Their Voluntary Resettlement in the Russian Federation (2007-October 2011)*, IMMIGRATION & REFUGEE BD. OF CAN. (Oct. 8, 2011), <http://www.refworld.org/docid/5072b7952.html> [hereinafter *Information on the State Resettlement Program*].

37. *See* Zhuravsky & Vykhovanets, *supra* note 6 (reporting that the goals of the Compatriot Law were undermined by the fact that there did not seem to be a working definition of compatriot that was both workable in practice and in law).

38. *Information on the State Resettlement Program*, *supra* note 36, at 2 (describing the handbook requirements, but also noting that while some believe the

throughout its various incarnations, including the Russian State.³⁹ Under this definition, the law should apply to ancestors of Circassians who fled during the Russian Empire's conquest of Circassia, and what is now the Russian Federation.⁴⁰

Notably, the Compatriot Law offers significant benefits to repatriated citizens. Russian President Vladimir Putin pushed several programs in 2006 to accompany the Compatriot Law to provide resettlement assistance, such as the Program of Work with Compatriots Abroad.⁴¹ The programs offer eligible compatriots financial aid, job security, and legal assistance in the hopes of encouraging compatriots to remain in designated areas for at least two years.⁴² A revision of the Compatriot Law in 2012 added benefits for potential compatriots, including relocation costs, income tax cuts, more leeway in choosing relocation sites, and the ability to bring extended family.⁴³

Yet over the last two decades the law's many amendments have attempted to narrow the definition of compatriot. For instance, an amendment in 2005 favored individuals who already knew Russian language and culture, commonly known as "Ours Abroad."⁴⁴ Lawmakers justified this designation for national security concerns, hoping to not repatriate individuals who belong to groups that fuel Russian xenophobia and cannot easily integrate into Russian society.⁴⁵ The law was again revised in 2010 to limit its scope only

statute and program apply to all former Soviet citizens, other factors such as the individual's ability to speak Russian must be satisfied).

39. *Id.*

40. *See id.* (allowing repatriation for descendants of individuals who emigrated from the "Russian state," which includes the Russian Empire).

41. Igor Zevelev, *Russia's Policy Toward Compatriots in the Former Soviet Union*, RUSS. IN GLOBAL AFFS. (Mar. 2, 2008), http://eng.globalaffairs.ru/number/n_10351.

42. *Id.* (reporting that these programs received several hundred million rubles in federal assistance); *Information on the State Resettlement Program*, *supra* note 36, at 3.

43. Natalya Krainova, *Russia Puts Renewed Hope in Repatriation Program*, MOSCOW TIMES (Sept. 18, 2012), <http://www.themoscowtimes.com/news/article/russia-puts-renewed-hope-in-repatriation-program/468389.html>.

44. *See* Zhuravsky & Vykhovanets, *supra* note 6 (noting that this category is considered noncontroversial because no one opposed such individuals' resettlement to Russia).

45. *Id.*

to Russian citizens and Russian-speaking residents of other States.⁴⁶ Russian officials commonly use ambiguous terminology to designate eligible compatriots. For instance, in a 2012 interview pertaining to the Compatriot Law, the head of Russia's Regional Development Ministry's Interethnic Department, Alexander Zhuravsky, reminded potential compatriots that they "must feel cultural, historical, and spiritual relation [sic] to Russia" to take advantage of the program.⁴⁷

Regardless, many Circassians viewed the Compatriot Law as an opportunity to return to their ancestral homelands.⁴⁸ Thousands of Circassians recently fled Syria to escape the escalating war and sought repatriation in their native homeland of Adygea, Russia.⁴⁹ As of February 2013, sixty-five Circassian families have resettled in Adygea, meeting the 450 per annum quota set by Moscow.⁵⁰ Many repatriated Circassians and Adygea's government have asked Moscow to increase the quota to 2,000 per annum to accommodate the influx of Circassian refugees.⁵¹ However, it seems unlikely that Moscow will capitulate to this request. The Ministry of Regional Development recently announced that Circassians do not qualify as compatriots under the Compatriot Law because they were not Russian citizens during the Circassian exodus in 1864.⁵² The Ministry further concluded that Circassians voluntarily left the northwest Caucasus region by 1864, and thus abandoned any claims for reentry.⁵³ This determination solidifies permanent barriers for Circassians to return to their homelands.

46. *Russia Amends Law on Compatriots Abroad*, THE VOICE OF RUSS. (July 9, 2010), <http://voiceofrussia.com/2010/07/09/11904454>.

47. Krainova, *supra* note 43.

48. Dzutsev, *Adygea*, *supra* note 4 (providing that the law on compatriots would technically allow Syrian Circassians to return because they used to live in the Russian Empire).

49. *See id.*

50. *Id.* (reporting that the families integrated with the local community and were given state-sponsored Russian lessons).

51. *Id.*

52. *Syrian Circassians*, *supra* note 7 (claiming that contrary to previous statements by the Russian government, Circassians were not a part of the Russian empire in 1864).

53. *Id.*

C. THE RIGHT OF RETURN

The international principle of the right of return has ancient roots. The Magna Carta, a British charter from 1215, allowed for “anyone . . . to leave [the] kingdom and return, safe and secure by land or water.”⁵⁴ The Geneva Conventions from 1864 to 1949 also contain provisions that prohibit forced migration of civilian populations and require repatriation of refugees.⁵⁵ In addition, the Universal Declaration of Human Rights (“UDHR”) provides that “everyone has the right to leave any country, including his own, and to return to his country.”⁵⁶ Thus, the right of return is considered an amalgamation of customary international law and is binding on all States.⁵⁷

Significantly, as a signatory to the ICCPR and International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”), without reservation to the relevant articles, Russia is bound to adhere to the internationally recognized right of return.⁵⁸ The ICCPR, a binding treaty on all signatories, contains provision 12(4), which provides, “[n]o one shall be

54. W. Thomas Mallison & Sally V. Mallison, *The Right of Return*, 9 J. PALESTINE STUD. 125, 125-26 (1980) (stating that even before this codification, historically the right of return was universally accepted and practiced).

55. *Id.* at 126 n.4 (providing provisions within all four Geneva Conventions that not only allow for a right of return but prohibits expulsion as well).

56. Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 13(2), U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [hereinafter UDHR].

57. *See, e.g.*, Statute of the International Court of Justice, art. 38, June 26, 1945, 33 U.N.T.S. 993 [hereinafter I.C.J. Statute] (stating the Court must rule in accordance with binding international law, including “international custom, as evidence of a general practice of law”); GAIL J. BOLING, *THE 1948 PALESTINIAN REFUGEES AND THE INDIVIDUAL RIGHT OF RETURN: AN INTERNATIONAL LAW ANALYSIS* 11 (2d ed. 2007) (arguing Israel’s obligation to allow Palestinian right of return under numerous universally accepted international documents).

58. ANTONIO CASSESE, *INTERNATIONAL LAW* 170 (2d ed. 2005) (providing that treaties are binding on all signatories); International Covenant On Civil And Political Rights Declarations and Reservations, Mar. 23, 1976, U.N.T.S. 999, 2, 11, *available at* <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-4.en.pdf>; International Convention On The Elimination Of All Forms Of Racial Discrimination Declarations and Reservations, Jan. 4, 1969, U.N.T.S. 660, 2, 8, *available at* <https://treaties.un.org/doc/Publication/MTDGS/Volume%20I/Chapter%20IV/IV-2.en.pdf>.

arbitrarily deprived of the right to enter his own country.”⁵⁹ Similarly, the ICERD allows for the right of return under article 5(d)(ii).⁶⁰ In addition, both the ICCPR and ICERD prohibit denial of individual rights based on race or ethnicity.⁶¹

In addition, the U.N. General Assembly passed resolution 194(III) in 1948, which affirms Palestinian refugees’ right of return to their homelands within Israel.⁶² In addition to other resolutions to affirm Palestinian right of return, the U.N. General Assembly has annually reaffirmed resolution 194(III), reaffirming the right of return as an international norm.⁶³ The U.N. has passed resolutions and worked towards repatriation of refugees with relative success in Afghanistan, Bosnia-Herzegovina, Mozambique, Myanmar, and Rwanda.⁶⁴ However, critics argue that although the international community has agreed to a right of return in principle, political realities surrounding a group’s mass dislocation prevent right of return in both theory and practice.⁶⁵

The right of return is also more expansive and covers more individuals than the language in 12(4) might suggest at first glance. First, the ICCPR uses “entry” instead of “return,” the term found in the UDHR.⁶⁶ The term “entry” is uncontroversial and considered

59. ICCPR, *supra* note 5, art. 12(4).

60. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, U.N. Doc. A/6014 (Mar. 7, 1966) [hereinafter ICERD] (providing “[t]he right to leave one’s country, including one’s own, and to return to one’s country.”).

61. ICCPR, *supra* note 5, art. 26; ICERD, *supra* note 60, art. 5.

62. Kathleen Lawand, *The Right to Return of Palestinians in International Law*, 8 INT’L J. REFUGEE L. 532, 545 (1996) (stating that resolution 194(III) provides not only the right of return, but also just compensation for lost or damaged property even for those who choose not to return).

63. *Id.* at 545-46 (emphasizing that resolution 194(III) did not create a new right of return, but merely reaffirmed the internationally recognized right of return).

64. See Eric Rosand, *The Right to Return Under International Law Following Mass Dislocation: The Bosnian Precedent?*, 19 MICH. J. INT’L L. 1091, 1111, 1120 (1998) (describing the Bosnian repatriation as only minimally successfully, with only 400,000 of the 2.2 million returning after two and a half years).

65. *Id.* at 1137-38 (finding that although rates of returning refugees have increased, the right of return is more of an ideal than an actual right).

66. Compare UDHR, *supra* note 56, art. 13(2), with ICCPR, *supra* note 5, art. 12(4).

broader than a citizen's ability to leave their State and come back.⁶⁷ It includes any individual that wishes to enter "his own country," regardless of the individual's citizenship or place of birth.⁶⁸ For example, Palestinian refugees, who have now lived several generations removed from their homeland, qualify.⁶⁹ The right of return for the original refugees transfers to descendants.⁷⁰

Second, the Office of the High Commissioner on Human Rights' CCPR General Comment No. 27 found article 12(4) non-limiting in terms of a national or alien who wishes to claim the right.⁷¹ The right can only be identified under interpretations of "his own country," which extends nationality beyond formal State citizenship to encompass an individual's personal connection with a specific area.⁷² Therefore, nationality may include an individual that has been stripped of State citizenship or transferred to another State so long as the individual maintains a "close and enduring connection" with their country.⁷³ CCPR General Comment No. 27's interpretation of "country," combined with the ICCPR article 12(4)'s term of "entry," point toward a broader interpretation that includes the ancestors of individuals originally stripped of nationality.⁷⁴ Therefore, although several generations of a group may reside outside of their ancestral

67. Lawand, *supra* note 62, at 547 (analyzing the ICCPR *travaux préparatoires*, which indicate entry as a greater right than the right of leaving and reentering one's State).

68. *Id.*

69. BOLING, *supra* note 57, at 63-64 (detailing the scope of Israel's breach under the ICCPR for denying the right of return to multiple generations of Palestinians under the term entry in article 12(4)).

70. Sander Agterhuis, *The Right to Return and its Practical Application*, 58 REVUE HELLENIQUE DE DROIT INTERNATIONAL 1, 9 (2005) (relating one's own country in accordance with CCPR General Comment No. 27's interpretation of "one's own country" to the "close and enduring connection" established in the *Nottebohm* case, which includes subsequent generations of refugees); see U.N. Human Rights Comm., CCPR General Comment No. 27: Article 12 (Freedom of Movement), ¶ 19, U.N. Doc. CCPR/C/21/Rev.1/Add. (Nov. 2, 1999) [hereinafter CCPR General Comment No. 27]; *infra* Section III(A).

71. CCPR General Comment No. 27, *supra* note 70, ¶ 20 (finding that the wording of "his own country" to be much broader than the country of an individual's nationality, thus extending the right to aliens).

72. *Id.*

73. See Agterhuis, *supra* note 70, at 9.

74. CCPR General Comment No. 27, *supra* note 70, ¶ 20.

homelands, they may remain attached to it in a way that most would still consider it their home or country.⁷⁵

Third, although the ICCPR *travaux préparatoires*—the official record of negotiation for the ICCPR—are not as clear on the meaning behind the term “country” in article 12(4), it is widely considered to have a much broader and more subjective meaning than “State” within the ICCPR.⁷⁶ The ICCPR utilizes both terms to define different concepts.⁷⁷ Indeed, the original draft of article 12(4) stated “the country of which he is a national,” but the wording changed to “his own country” to allow for interpretations that included permanent home instead of just citizenship.⁷⁸ Both the drafters of the UDHR and ICERD used “country” as the operative word in reference to right of return instead of State, in contrast with other regional human rights treaties, such as the American Declaration, American Convention, and European Convention, which provide narrower language in reference to the right of return: “the State of which he is a national.”⁷⁹

The criterion to establish nationality under the International Court of Justice’s *Nottebohm* case⁸⁰ is widely accepted as the measure of an individual’s home or country.⁸¹ In resolving a dispute over an

75. *Id.* ¶ 19 (“It includes not only the right to return after having left one’s own country; it may also entitle a person to come to the country for the first time if he or she was born outside the country (for example, if that country is the person’s State of nationality). The right to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.”).

76. See Lawand, *supra* note 62, at 549 (noting that the precise meaning of “one’s own country” is ambiguous and has been interpreted more closely to the idea of a “permanent home”).

77. Compare ICCPR, *supra* note 5, art. 12(1), with ICCPR, *supra* note 5, art. 12(4).

78. Lawand, *supra* note 62, at 549-50 (quoting drafters discussions over article 12(4) “such a formula was not satisfactory for a State that which granted the right of ‘return’ to persons who were not nationals but who had established their home in the country.”).

79. UDHR, *supra* note 56, art. 13(2); ICERD, *supra* note 60, art. 5(d)(ii); Lawand, *supra* note 62, at 548 (noting that “his own country” has been regarded as much broader than “State” in terms of scope of inclusiveness).

80. *Nottebohm Case (Liech. v. Guat.)*, 1955 I.C.J. 4, 22-23 (Apr. 6).

81. Lawand, *supra* note 62, at 551 (equating country with what “one considers ‘home’” and a sense that is based on history, race, religion, family, or other

individual's conflicting nationalities, the Court found that nationality extended beyond strict definitions of citizenship.⁸² The Court looked to a variety of State and international decisions and concluded that nationality was commonly tied to habitual residence, family ties, participation in public life, and attachment to a specific country, which scholars often call an individual's genuine link or connection with a country.⁸³ Under the genuine link criteria, an individual's nationality, and thus country, is more tied to a sense of belonging than strict definitions of citizenship.

There are several uncontested barriers that may prevent right of return even if the individual has a genuine connection to the State in question. For instance, abandonment in the form of an individual fully integrating into a new State may prevent right of return.⁸⁴ Even if that individual, or their progeny, maintains genuine connections to their State of origin, they may be rightly denied citizenship under right of return.⁸⁵ Refugees may also lose their right to return in instances where their genuine connection to their home country has been severed.⁸⁶ This may occur in cases where a long time has passed and subsequent generations have fully integrated into a new community.⁸⁷ However, if a State systematically expels an individual or prevents any attempts to repatriate by the refugee or

genuine links as in the *Nottebohm* case).

82. *Nottebohm Case*, 1955 I.C.J. at 22-23 (finding that Guatemala need not recognize Lichtenstein's grant of nationality where the individual sought to come under the latter's protections but not to become "wedded to its traditions, its interests, its way of life or of assuming the obligations . . . and exercising the rights . . .").

83. *Id.* at 22; BOLING, *supra* note 57, at 28 n.45 (citing *Nottebohm* to determine nationality in terms of a genuine link between an individual and a State); Lawand, *supra* note 62, at 551, 553 (describing the bond of an individual with a specific State creates a legal bond under *Nottebohm*).

84. *See* Agterhuis, *supra* note 70, at 30 (noting naturalization to a new State for an indefinite amount of time and fully integrating into the new State, does not preclude a right to return but may "erode the genuine link").

85. *See* BOLING, *supra* note 57, at 78 (describing U.N. Resolution 194, which mandated restitution and compensation for Palestinians who decline to return).

86. Agterhuis, *supra* note 70, at 30 (providing examples of instances when a refugee may abandon a right of return by fully integrating into another society through marriage or lack of connection with their home country).

87. *Id.*

their progeny, a right of return may still exist.⁸⁸

The protections under the ICCPR article 2(1), which provide protections to individuals against discrimination based on race, religion, or social origin among other classifications, also bolster the right of return.⁸⁹ This provision prohibits States from using arbitrary or discriminatory practices against an individual, including the individual's exercise in right of return.⁹⁰ Further, unlike ICCPR articles 12(1) and 12(2), which allow for State derogations of rights in extraordinary circumstances as described in article 12(3), there is no language within the ICCPR to permit States to derogate from ICCPR article 12(4).⁹¹ Therefore, the right of return is largely considered to be absolute and non-derogable.⁹²

III. ANALYSIS

Circassians have a right of return under article 12(4) of the ICCPR because Circassians have maintained a continued attachment to Circassia as their country. Because Circassians have never had an opportunity to return since the forced expulsion from their ancestral homelands in 1864, the right of return has passed through subsequent generations. Russia has not only failed to meet its obligations to Circassians, but has actively frustrated efforts of return in determining Circassians do not meet the definition of compatriot under the Compatriot Law, which is a violation of article 12(4) of the ICCPR. In addition, Russia's conclusion that Circassians are not

88. *Id.* (discussing that the reason for an individual's non-exercise of the right of return must be weighed in favor of the individual when a State's practice has barred return).

89. ICCPR, *supra* note 5, art. 2(1).

90. HURST HANNUM, *THE RIGHT TO LEAVE AND RETURN IN INTERNATIONAL LAW AND PRACTICE* 45 (1987) (discussing the possibility that the drafters deliberately introduced ambiguity into the ICCPR in using the term "arbitrary" rather than "unlawful" to permit restrictions related to national security).

91. *See* Agterhuis, *supra* note 70, at 6-7 (stating that because article 12(4) is stated in absolute terms and not derogable under 12(3), the State may not derogate from them in a manner that is inconsistent with other obligations under international law and do not involve discrimination based "solely on grounds of race, colour, sex, language, religion or social origin").

92. *See id.* at 7 n.40 ("[T]he goal of prohibiting arbitrary denial of entry was to guarantee entry in all cases except where an individual has been banished as a penal sanction.").

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compatriots under the Compatriot Law discriminates against Circassians as specific ethnic group and violates ICCPR article 2(1). Russia has also amended the law to narrow the definition of compatriot solely for discriminatory purposes to exclude all non-ethnic Russians, which also violates article 2(1) of the ICCPR and may further frustrate Circassian return.

A. CIRCASSIAN RIGHT OF RETURN

Russia is a signatory to the ICCPR and thus Circassians are entitled to a right of return to Circassian lands under article 12(4).⁹³ Indeed, the ICCPR's *travaux préparatoires*, combined with subsequent case law and relevant U.N. resolutions, demonstrate the applicability of the right of return under ICCPR article 12(4) in the Circassian context. Although the right of return is an individual right and not a group right, establishing a general right of return for Circassians would strengthen individual Circassians' right of return.⁹⁴ As discussed below, Circassian right of return is particularly strong because Circassians were both forcibly removed from their ancestral homelands and many continue to assert territorial rights and connections with Circassia.⁹⁵

The well-documented cases of Circassian expulsion from Adygea are important when discussing Circassian right of return. Although individuals that voluntarily and permanently leave their country do not renounce their right of return, individuals pushed from their homes are specifically protected under ICCPR article 12(4).⁹⁶ As international law strictly prohibits forced removal, particularly of ethnic groups like the Circassians, the right of return is stronger in such instances.⁹⁷ The Russian campaign against Circassians included

93. See ICCPR, *supra* note 5, art. 12(4) ("No one shall be arbitrarily deprived of the right to enter his own country.").

94. See BOLING, *supra* note 57, at 10-14 (analyzing that although the right of return is an individual right, it can functionally apply to a large group of people).

95. See, e.g., KING, *supra* note 20, at 58 (describing an instance in which Circassians were forcibly removed from their native homelands taken captive as insurance to deter attackers, as laborers, or held for ransom). See generally CBA History, CIRCASSIAN BENEVOLENT ASS'N, <http://www.cbaamerica.org/history> (last visited Feb. 12, 2014); *Circassian Endorsement of the UN Declaration on the Rights of Indigenous Peoples*, CAUCASIAN KNOT (2011), http://eng.kavkaz-uzel.ru/system/attachments/0000/1649/DECLARATION_OF_SELFDETERMINATION_AND_NATIONHOOD_OF_THE_AUTONOMOUS_AUTOCHTHONOUS_INDIGENOUS_CIRCASSIAN_PEOPLES_-_A_NATION_IN_EXILE.pdf [hereinafter *Circassian Endorsement*].

96. CCPR General Comment No. 27, *supra* note 71, ¶ 21 ("A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.").

97. See ICCPR, *supra* note 5, art. 2(1) (ensuring that all persons are equally protected regardless of race, color, sex language, religion, or other opinion); ICERD, *supra* note 60, art. 5(d)(ii) (protecting the right of any person to return to

mass killings, enslavement, and expulsions that almost rid Circassia of Circassians.⁹⁸ This extreme and total attack on a single group would seem to make Circassian right of return absolute.⁹⁹

However, even if the first Circassian refugees in 1864 were entitled to an absolute right of return, subsequent generations may not be. Simply having ancestral links to Circassia may not be enough for an individual Circassian to assert a right of return.¹⁰⁰ Circassian individuals would need to demonstrate the *Nottebohm* “genuine connection” to Circassian lands for right of return.¹⁰¹ There are many examples of Circassians maintaining a genuine connection to their ancestral lands. For instance, Circassian civil society recently endorsed the U.N. Declaration on the Rights of Indigenous Peoples.¹⁰² Within the endorsement, the group refers to Circassian people as a “nation in exile” and repeatedly recalls the strong ties between Circassians and Circassia.¹⁰³ The group also requests that Russia and the international community uphold and defend the rights of indigenous Circassians under international law.¹⁰⁴ In addition, the group requests right of return and self-determination within Circassia

their own country).

98. KING, *supra* note 20, at 45, 49 (noting that generals became famous in Russian cities over the use of their ruthless military tactics).

99. BOLING, *supra* note 57, at 9-10 (arguing a right of return not only exists for Palestinians but is also strengthened because international law prohibits the expulsion of groups based upon ethnicity).

100. See Ilias Bantekas, *Repatriation as a Human Right Under International Law and the Case of Bosnia*, 7 J. INT'L L. & PRAC. 53, 57 (1998) (finding that aliens that merely have an ancestral link to a county are not covered by the ICCPR).

101. See, e.g., Dina Awad, *Long Journey Home: The Right of Return, International Law, & the Fate of Palestinian Refugees*, MUFTAH (Feb. 2, 2011), http://muftah.org/the-long-journey-home-the-right-of-return-international-law-the-fate-of-palestinian-refugees-by-dina-awad/#_ftnref (arguing that Palestinians have a genuine connection to their homeland and therefore satisfy the *Nottebohm* test for nationality).

102. Lars Funch Hansen, *Renewed Circassian Mobilization in the North Caucasus 20-years After the Fall of the Soviet Union*, 11 J. ON ETHNOPOLITICS & MINORITY ISSUES EUR. 103, 105 (2012) (describing the expanding influence and role of civil society groups in promoting Circassian interests locally and throughout Russia); *Circassian Endorsement*, *supra* note 95.

103. *Circassian Endorsement*, *supra* note 95, at 5-6 (listing the numerous tribes, lands, and history of the Circassian people).

104. *Id.* at 7-9.

as an indigenous people.¹⁰⁵ The document is signed by dozens of Circassian leaders throughout the diaspora.¹⁰⁶ This clearly demonstrates the deep connection many Circassians feel toward their ancestral homelands.

Circassians have also created civil organizations that are tied to Circassian culture and Circassian lands.¹⁰⁷ These organizations regularly hold cultural events that celebrate the Nart epics, which are historical tales about Circassian people.¹⁰⁸ These stories are connected with Circassian land, as are many other customs associated with being Circassian.¹⁰⁹

These organizations also run campaigns to raise awareness about the Circassian genocide during the 1800s.¹¹⁰ These campaigns increased in response to the 2014 Winter Olympics in Sochi, which many Circassians viewed as an insensitive location to hold the Olympics.¹¹¹ Indeed, Circassians throughout the diaspora protested the 2014 Winter Olympics and raised awareness about Circassian expulsion from the northwest Caucasus.¹¹² Circassian civil society

105. *Id.* at 9.

106. *Id.* at 13.

107. See generally *CBA History*, *supra* note 95 (describing an organization that is committed to maintaining Circassian heritage).

108. NATHO, *supra* note 1, at 21-24 (stating that the Nart Epics contained tales from all over Circassia and all the tribes that make up the Circassian people).

109. See, e.g., *About the Narts Dance Ensemble*, CIRCASSIAN BENEVOLENT ASS'N, <http://www.cbaamerica.org/narts-dance> (last visited Mar. 9, 2014) (describing a play about a warrior in a Circassian village in the 1860s).

110. Sefer Berzeg, *1864-2014 Circassian Genocide Olympics*, NO SOCHI 2014, <http://nosochi2014.com/articles/1864-2014-circassian-genocide-olympics/pdf.php> (last visited Sept. 23, 2014) (providing a summary of the genocide, which included invasions of Circassian villages that Russia rebranded and colonized).

111. Joshua Keating, *Did the Age of Genocide Begin in Sochi?*, SLATE (Feb. 5, 2014), http://www.slate.com/blogs/the_world_/2014/02/05/the_circassians_and_the_olympics_did_the_age_of_genocide_begin_in_sochi.html (asserting that the 2014 Winter Olympics have given the world an opportunity to review the Circassian genocide).

112. Gabriele Barbati, *Circassians Protest Winter Olympics Being Held at Sochi Genocide Site*, INT'L BUS. TIMES (Feb. 6, 2014), <http://www.ibtimes.com/circassians-protest-winter-olympics-being-held-sochi-genocide-site-1553582> (reporting on a Circassian Israeli protest against Sochi as the site of the 2014 Winter Olympics despite its history of being the site of the Circassian genocide); Amber Hildebrandt, *Russia's Sochi Olympics Awakens Circassian Anger*, CBC NEWS (Aug. 14, 2012), <http://www.cbc.ca/news/world/russia-s-sochi-olympics->

has also provided aid to repatriating Circassian refugees from Syria into Russia.¹¹³ Others have called for reinstatement of Circassian village names, which were replaced with Russian names during Circassian expulsion.¹¹⁴

These actions establish an ongoing interest that many Circassians have for their ancestral homelands and their deep, genuine connection with Circassian lands.¹¹⁵ This connection is rooted in an attachment or sentiment toward Circassian homelands as described in *Nottebohm*.¹¹⁶ These attachments allow Circassians to make valid claims to return under ICCPR article 12(4) because Circassians as a group legitimately consider the northwest Caucasus region “[their] own country.”¹¹⁷

As the right of return is considered an individual and not a group right, each Circassian’s right may vary depending on the individual’s personal connection with Circassia.¹¹⁸ However, an individual of the

awakens-circassian-anger-1.1263009 (“We don’t want the Sochi Olympics to happen on our ancestors [sic] graves . . .”).

113. Valery Dzutsev, *Syrian Circassian Refugees in Turkey Ask to Be Repatriated to Russia*, JAMESTOWN FOUND. (Sept. 16, 2013), http://www.jamestown.org/single/?tx_ttnews%5Bpointer%5D=4&tx_ttnews%5Btt_news%5D=41362&tx_ttnews%5BbackPid%5D=390&cHash=d87cf6e44056120a4338fc4c5286c4bc#.VBxhRS5dVuo [hereinafter Dzutsev, *Syrian Circassian*] (reporting that Circassian civil society has made efforts to repatriate Circassians to Circassian lands without Russia’s help).

114. Sufian Zhemukhov, *The Circassian Dimension of the 2014 Sochi Olympics* 1, 2 (Program on New Approaches to Research & Sec. in Eurasia, Policy Memo No. 65, 2009), available at http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/pepm_065.pdf (providing that 15,000 Circassians in Sochi have requested Lazarevskoye be changed back to the historical Circassian name of Psyhu).

115. *Winter of Discontent: Circassians Are Protesting the Holding of the 2014 Winter Olympic Games 150 Years After Being Expelled from Their Land*, AL JAZEERA (June 19, 2013), <http://www.aljazeera.com/programmes/aljazeeraworld/2013/06/20136179431945292.html> (reporting on an international contest for Circassians to remake the 2014 Winter Olympic mascots in Sochi to represent the plight of the Circassian people); Zhemukhov, *supra* note 114, at 2 (discussing Circassian rituals throughout the diaspora to light candles in remembrance of the genocide that took place in 1864).

116. *Nottebohm Case* (Liech. v. Guat.), 1955 I.C.J. 4, 22-23 (Apr. 6) (describing nationality as interests through sentiments in which the individual feels more attachment to the State in question than any other).

117. See ICCPR, *supra* note 5, art. 12(4).

118. See CCPR General Comment No. 27, *supra* note 70, ¶¶ 19-20 (“The right

group may use historical information that demonstrates the group's attachment to specific lands.¹¹⁹ Therefore, under article 12(4) of the ICCPR, Russia is required to allow a right of return to any individual Circassian regardless of the individual's country of birth or citizenship.¹²⁰ This is because an individual Circassian may point to the ongoing relationship Circassians maintain with their ancestral homelands as evidence of a genuine connection. Accordingly, Russia should allow Circassian right of return in order to meet its obligations under the ICCPR.

B. BARRIERS TO CIRCASSIAN RIGHT OF RETURN

There are several arguments that Russia has made to prohibit Circassian right of return as either inapplicable or impractical. These arguments include voluntary abandonment and temporal limitations, a lack of duty on behalf of Russia, and political impossibilities.¹²¹ Russia has explicitly invoked both its lack of duty and voluntary abandonment as reasons for denying Circassian return, and has implied political impossibility.¹²² These arguments are generally meritless. Indeed, the only barriers for many Circassians from returning are arbitrary Russian policies that are at odds with obligations to the ICCPR.¹²³

to return is of the utmost importance for refugees seeking voluntary repatriation. It also implies prohibition of enforced population transfers or mass expulsions to other countries.”); Agterhuis, *supra* note 70, at 9 (arguing that the right of return as an individual right, also extends to individuals within a larger group); Lawand, *supra* note 62, at 542 (describing several scholarly articles and the ICCPR's *travaux préparatoires* determination of the right of return as an individual right, and not a group right in the context of the Palestinian people).

119. See generally BOLING, *supra* note 57.

120. See CCPR General Comment No. 27, *supra* note 70, ¶¶ 12, 20 (providing prohibitions against freedom of movement, including the right of return, unless provided for in ICCPR article 12(1)-(2)).

121. See Agterhuis, *supra* note 70, at 30 (arguing that the mere fact of obtaining citizenship in another country does not necessarily mean a person has voluntarily abandoned their right to return).

122. See *Syrian Circassians*, *supra* note 7 (conveying Director of Minregion Alexander Zhuravsky's response that Circassians were not Russians when they voluntarily left Circassia in the 1800s).

123. See generally Dzutsev, *Adygea*, *supra* note 4 (describing political pressure on behalf of Circassians in the northwestern Caucasus to change quotas for immigration into Adygea from 450 to 2,000 per annum).

First, Russia's description of the history surrounding the great Circassian exodus in the 1800s can hardly be described as Circassians' voluntary abandonment of their country, and thus their right of return.¹²⁴ Circassians faced extinction leading up to 1864, including enslavement, mass killings, forced integration of Circassian children into Russian society, and expulsion.¹²⁵ This was not just the reality on the ground for Circassians, but the explicit policy of Russian authorities.¹²⁶ Arguing that subsequent generations of Circassians abandoned their right of return by fully integrating into new societies also fails because Circassians never had an opportunity to repatriate.¹²⁷

Further, as discussed above, Circassians have consistently maintained the genuine link to the northwest Caucasus region by maintaining a cultural identity tied to the land and repeatedly making land claims to their home territory.¹²⁸ In spite of the fact that Circassian expulsion occurred 150 years ago, it cannot be said that the individuals voluntarily abandoned their right of return because Russia has consistently frustrated Circassian attempts at repatriation.¹²⁹ Indeed, permitting Russia to claim abandonment under such circumstances would encourage or legitimize State practices that are at odds with the spirit of article 12(4) of the ICCPR.¹³⁰ States would merely have to run the proverbial clock down to reach an arbitrary temporal limit that definitively barred the right of return under the abandonment exception without concern as

124. Kazemzadeh, *supra* note 2, at 261 ("The last phase of the Caucasian war can only be described as genocide").

125. *Id.* at 261-63.

126. *Id.* at 253 ("quoting Czar Nicholas I, 'Having thus completed one glorious enterprise, another, equally glorious in my eyes, and a much more important one in regard to direct advantages, awaits you: The pacification forever of the Mountaineer peoples or the extermination of the unsubmissive'").

127. *Id.* at 263 (describing Soviet policies of gathering remaining Circassians in 1943 for forced migration to Siberia, Russia); *Syrian Circassians*, *supra* note 7 (reporting on Russian decision to restrict repatriation of Circassians under the Compatriot law).

128. Dzutsev, *Syrian Circassian*, *supra* note 113; *Circassian Endorsement*, *supra* note 95.

129. See Agterhuis, *supra* note 70, at 30 (arguing that allowing intentional denial of repatriation under the right of return would legitimize a State's arbitrary or discriminatory breach with ICCPR article 12(4)).

130. Lawand, *supra* note 62, at 557.

to whether the individual or decedents ever had an opportunity to return in the first place.¹³¹ Therefore, Circassian right of return under ICCPR article 12(4) is not negated by abandonment or temporal limitations because Circassians have maintained genuine connections to the northwest Caucasus region and have never been afforded the right to return previously.

Second, Russia has also claimed that it does not owe a duty to Circassians because Circassians were not Russians during the Circassian exodus in 1864.¹³² This argument with respect to the right of return is irrelevant for several reasons. First, it contradicts previous Russian policy of including Circassia as part of the Russian Empire as early as 1557.¹³³ In 2006, Russia officially celebrated the 450th anniversary of Circassian unification with the Russian Empire, making Circassians at least quasi-subjects of the Russian Empire hundreds of years ago.¹³⁴ Second, it ignores the international norm of succession.¹³⁵ The law of succession provides that when one State absorbs another's sovereignty, the successor State also inherits the population of its predecessor.¹³⁶ Both the right of return under article 12(4) of the ICCPR and *Nottebohm* definitions for nationality indicate that Circassian right of return transfers to the current Russian Federation regardless of Circassia's sovereign status in

131. *Id.* (arguing furthermore that a weakened right of return claim can be strengthened if the government of the country of origin acted directly or indirectly to hinder the return).

132. *Syrian Circassians*, *supra* note 7.

133. *See id.* (detailing Russia's backpedaling on first determining that Circassians voluntarily ascended into the Russian empire in the sixteenth century for public relations before declaring Circassians were not compatriots under the law); *see also* Oleg Tsvetkov, *Circassian Outrage at Anniversary Plans*, INST. FOR WAR & PEACE REPORTING (Sep. 26, 2006), <http://iwpr.net/report-news/circassian-outrage> (discussing the decree Russian President Vladimir Putin signed marking 2007 as a year of festivities in Adygea in commemoration of the 450th anniversary of Kabardinian prince and Tsar Ivan the Terrible entering into a military alliance in 1557).

134. *See* Tsvetkov, *supra* note 133 (reporting on Russia's official event to celebrate 450 years of Circassian integration within the Russian empire).

135. JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 423 (8th ed. 2013) ("State succession occurs when there is a definitive replacement of one state by another in respect to sovereignty . . .").

136. *Id.* at 656-57 (providing that the law of succession is a general rule followed by most States).

1864.¹³⁷ Indeed, Russia inherited this obligation when it systematically conquered Circassian lands throughout the Caucasus, expelling the territory's habitual residents and replacing the existing government that would have recognized Circassians' right of return.¹³⁸ Therefore, Russia's justification that Circassians were not within the Russian state during emigration in the mid-1800s is irrelevant because Russia is obligated to recognize Circassian right of return under article 12(4) of the ICCPR.¹³⁹

Finally, Russia has implied that it is politically impossible to reintegrate groups like the Circassians because as non-Russians, Circassians and similar groups with ancestral emigrants from Russian territory, may fuel Russian xenophobia or be unable to fit within the "local social milieu."¹⁴⁰ However, for political realities to trump right of return, the character of an area must be so fundamentally altered that the genuine link between the individual and their lands is severed.¹⁴¹ The northwest Caucasus region still maintains much of its Circassian character. Indeed, a population of Circassians still exists within the Adygea that maintain Circassian culture and regularly request to reinstate Circassian character into the area.¹⁴² Russia regularly celebrates Circassian aspects of the Adygea province by holding events relating to historical Russian-Circassian ties.¹⁴³ Also, recent Circassian refugees from Syria have reentered

137. BOLING, *supra* 57, at 29-30 (finding the law of succession is customary international law that transfers nationality to habitual residents of the predecessor State to the successor because the location of their homes of origin remains unchanged).

138. *Id.* at 30 (stating that the law of succession transfers nationality even to habitual residents who were not physically present when the territory changed sovereignty).

139. Awad, *supra* note 101 (asserting that putting temporal limits on the right of return is legally unsound and would legitimize a State's arbitrary denial of the right of return).

140. See Zhuravsky & Vykhovanets, *supra* note 6.

141. See Lawand, *supra* note 62, at 556 (arguing that the lands that "have become Israel" have so fundamentally changed as to transform the lands beyond recognition, and have lost "their 'Arab Identity'" which makes the subjective element of the right to return for Palestinians more difficult to maintain). See generally Mallison & Mallison, *supra* note 54, at 125-28.

142. Zhemukhov, *supra* note 114, at 2 (discussing the remaining 15,000 Circassians as a politically active group in the northwest Caucasus).

143. See, e.g., Tsvetkov, *supra* note 134 (commemorating the integration of the

the Adygea peaceably and have been accepted by the local community.¹⁴⁴ Even the local government within the northwest Caucasus region has requested increased quotas in Circassian repatriation.¹⁴⁵ The only real barriers to increased Circassian reentry are decrees coming from Moscow, which likely stem from fear of Muslims in the northern Caucasus Mountains.¹⁴⁶

C. SHORTCOMINGS IN THE RUSSIAN COMPATRIOT LAW

As mentioned above, the determination by the Russian government that Circassians may not return under the Compatriot Law breached Russian obligations under article 12(4) of the ICCPR.¹⁴⁷ However, even if Russia changed its position on Circassian citizenship status during the Caucasus war, other aspects of the Compatriot Law could prevent right of return. First, the Compatriot Law tends to favor Russian-speaking individuals.¹⁴⁸ This policy is discriminatory as it precludes many individuals who would otherwise be eligible for the program.¹⁴⁹ Russian policy to deny

North Caucasian republic into the Russian state); *see also* Bruce Talley, *Circassian Visit*, SOCHI MAG., <http://sochimagazine.com/circassian-visit> (last visited Sept. 22, 2014) (describing a Russian invitation to Circassians abroad to visit Sochi before the 2014 Winter Olympics to celebrate the Circassian influence in the area and acknowledging their interest in the area as one which stems from it being their “ancestral homeland”).

144. *See also* Dzutsev, *Adygea*, *supra* note 4 (reporting on the sixty five Circassian families that fled Syria and now live in Adygea and how the local population and government would like more to immigrate).

145. *Id.* (providing that authorities within Adygea have stated they are prepared to receive more Circassian refugees from Syria).

146. Valery Dzutsev, *Expert Cites Dangers of Syrian Circassians' Return to the North Caucasus*, JAMESTOWN FOUND. (Apr. 23, 2012), http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=39298&no_cache=1#.VByD0C5dVuo [hereinafter Dzutsev, *Expert Cites Danger*] (citing Adrei Areshev, researcher for the Center for Central Asia, that the Russian government views Circassians immigrants as a security threat because Russians generally have a fear that outsiders will attempt to harm their country); *Syrian Circassians*, *supra* note 7.

147. *See generally* *Syrian Circassians*, *supra* note 7 (citing Russian officials that Circassians were not Russians when they voluntarily left Circassia in the 1800s).

148. *Information on the State Resettlement Program*, *supra* note 36 (reporting that several sources indicate that individuals applying to the program must be able to speak Russian).

149. *Id.* (providing a list of criteria for those who qualify as “compatriots”).

individuals, who speak languages other than Russian, access to the Compatriot Law breaches ICCPR article 2(1) for discrimination for social origin.¹⁵⁰ Regardless of Russian policymakers' national security concerns in amending the Compatriot Law, proclaiming that a specific ethnic group will ignite Russian xenophobia is certainly discriminatory.¹⁵¹ Requiring that individuals fit the Russian authorities' arbitrary ideal of a repatriated citizen violates ICCPR article 2(1) by discriminating based on religion, political opinion, and social origin since many may not fit this vague requirement.¹⁵²

Similarly, Russia would also breach obligations under article 12(4) of the ICCPR if any individual were denied right of return on the basis of language or lack of familiarity with Russian society and culture.¹⁵³ This would certainly be true of Circassians, who primarily live in Muslim states, such as Turkey, Syria, and Jordan.¹⁵⁴ In addition, the law would exclude stateless individuals from using the program.¹⁵⁵ This could further frustrate efforts by Syrian Circassian refugees to return since many are now stateless.¹⁵⁶

The Compatriot Law also pushes new immigrants to locations within Russia that may be outside the territory in which an individual wishes to exercise their right of return.¹⁵⁷ Many of the designated

150. ICCPR, *supra* note 5, art. 2(1) (prohibiting discrimination based on language).

151. See Zhuravsky & Vykhovanets, *supra* note 6 (describing Russian amendments to preclude groups that cannot fit into Russian societal milieu from using the Compatriot law).

152. ICCPR, *supra* note 5, art. 2(1).

153. *Id.*

154. Zhemukhov, *supra* note 114, at 2 (stating that most Circassians come from Turkey, Syria, and Jordan, and reside in countries with cultures and customs that are very different from Russia).

155. *Information on the State Resettlement Program*, *supra* note 36 (contrasting persons who became citizens of another State, versus, stateless persons who chose not to become citizens of the country where they reside).

156. See, e.g., Valery Dzutsev, *Circassians Become Targets in Syria: Activists Seek International Help*, JAMESTOWN FOUND. (Nov. 12, 2012), http://www.jamestown.org/single/?tx_ttnews%5Btt_news%5D=40093&no_cache=1#.VByIW5dVuo [hereinafter Dzutsev, *Circassians Become Targets*] (describing clashes within two Circassian villages in Syria that caused the inhabitants to flee to nearby villages).

157. *Id.* (reporting that only "entrepreneurs" are provided benefits to move to the region of their choice).

areas for repatriated citizens are far from the northwest Caucasus region, such as Siberia and the Far East.¹⁵⁸ This severely limits Circassian right of return to their ancestral homelands, protected in article 12(4) of the ICCPR. Therefore, Russia is failing to meet its international obligations under the ICCPR by continuing to deny Circassian return.¹⁵⁹

IV. RECOMMENDATIONS

Russia has options to meet its international obligations under the ICCPR to allow Circassian right of return. First, Russia could change its position that Circassians are not compatriots under the law and also amend the law to remove other barriers, such as language requirements. Second, Russia may choose to create a new law that would specifically encourage Circassian right of return.

A. FIXING THE COMPATRIOT LAW

Russia should reverse its stance on Circassian compatriot status for the Compatriot Law to meet its obligations under article 12(4) of the ICCPR for Circassian right of return.¹⁶⁰ Russia could do this by readopting the stance that Circassians were Russian citizens during the Circassian exodus in the 1800s.¹⁶¹ Indeed, both Russian authorities of today and of the past considered Circassian lands to fit within the Russian Empire throughout the Caucasus wars.¹⁶² Adopting this stance would allow Circassians to take advantage of the Compatriot Law as several Syrian refugees have already.¹⁶³ Additionally, Russia should remove language and cultural barriers

158. *Id.*

159. ICCPR, *supra* note 5, art. 12(4).

160. *See generally* Syrian Circassians, *supra* note 7.

161. Dzutsev, *Adygea*, *supra* note 4 (describing previous Russian official policy towards Circassians as a “voluntary accession” when Czar Ivan the Terrible married a Circassian duchess in the sixteenth century).

162. *See* Kazemzadeh, *supra* note 2, at 254 (citing Count E. F. Kankrin, Minister of Finance for the Russian government in 1827, that, “The Transcaucasian provinces not without reason could be termed our colony which should bring the state rather significant profits from the products of southern climates”). *See generally* Tsvetkov, *supra* note 133 (reporting on official celebrations to commemorate Circassian inclusion into the Russian empire as early as 450 years prior).

163. Dzutsev, *Adygea*, *supra* note 4.

that could hinder Circassian right of return under article 12(4) of the ICCPR.¹⁶⁴ Even if Circassians' status as compatriots was changed under the law, these requirements breach the ICCPR under article 2(1) and would likely cloud if not prohibit Circassian right of return.¹⁶⁵

B. ALTERNATIVE LAW TO ALLOW CIRCASSIAN RIGHT OF RETURN

As discussed above, the only real barriers to Circassian return are political. Officials in Moscow view increased Muslim influence in the Caucasus region as a threat to national security.¹⁶⁶ However, a change in Russia's policy to allow Circassian return could have the opposite effect by showing Circassians and Muslims that Russia is sincerely committed to becoming a multi-ethnic nation.¹⁶⁷ At the same time, it would fulfill Russian obligations to allow Circassian right of return under ICCPR article 12(4).¹⁶⁸

A new law to allow Circassian right of return would have to incorporate several measures to meet requirements under ICCPR article 12(4). First, it would have to officially acknowledge the series of atrocities that occurred during the Caucasian war to accept Circassians as a displaced people entitled to a right of return.¹⁶⁹ The law would have to acknowledge that decedents of Circassians

164. See *Russia Amends Law on Compatriots Abroad*, *supra* note 46.

165. See ICCPR, *supra* note 5, art. 2(1) (providing prohibitions against discrimination based on language, social origins, religion, or political beliefs); Levy, *supra* note 36 (reporting on Russian barriers to applicants to the Compatriot program based on the applicants ability to speak Russian and be comfortable with Russian society and culture).

166. Dzutsev, *Expert Cites Danger*, *supra* note 146; see also Michael Pizzi, *Under Sochi Spotlight, Forgotten Insurgency Aims to Mount Comeback*, AL JAZEERA AMERICA (Feb. 6, 2014), <http://america.aljazeera.com/articles/2014/2/6/long-rumblings-caucasusinsurgencyeyesitschanceinsochi.html> (reporting on increased Muslim extremism in the Caucasus region and Moscow's attempts at increasing security).

167. See Akbar Ahmed & Frankie Martin, *Putin's Challenge: The Circassians and the Winter Olympics*, AL JAZEERA (Apr. 04, 2012), <http://www.aljazeera.com/indepth/opinion/2012/04/2012446515233997.html> (last updated Apr. 4, 2012) (citing Putin's declaration for a new, multi-ethnic Russia).

168. ICCPR, *supra* note 5.

169. See Agterhuis, *supra* note 70, at 30 (providing that individuals that have voluntarily entered a new country to make permanent residency there may not be entitled to a right of return).

expelled from Russia had a right to return regardless of Circassia's status as a part of Russia during the Caucasian war.¹⁷⁰ Russia could establish a commission to pull together historical records to aid individuals who wish to claim a right of return by providing the necessary tools to demonstrate their genuine connection under *Nottebohm*.¹⁷¹ Alternatively, Russia could provide Circassians with a group right of return that would only require self-identification with the Circassian group, and Circassian group acceptance of the individual for entry.¹⁷² These programs do not need to have an indefinite open door policy of returning Circassians to meet ICCPR obligations. A sunset clause could allow the law to expire after a reasonable period of time, which would prevent individuals who do not assert their right of return within a certain timeframe from claiming a future right of return.¹⁷³

Second, the right of return program must provide some assistance to returning individuals to put them on equal footing with other Russians in the form of cheap or free land and basic services provided throughout Russia such as roads, water, or schools.¹⁷⁴ The 2014 Winter Olympics provided the perfect opportunity for Russia to absorb a large population of Circassians. Russia spent an estimated \$50 billion for massive overhauls in Sochi's infrastructure.¹⁷⁵ This upgrade in infrastructure could allow for an increase in Sochi's

170. CRAWFORD, *supra* note 135, at 649 (noting that rights to citizenship transfer pass through the laws of state succession); *supra* Section III(B) (finding that regardless of the borders during the Caucasian war, Russia is now responsible for the rights of the individuals of the Caucasus now).

171. See generally Lawand, *supra* note 62 (citing the *Nottebohm* genuine link test for the right of return).

172. See Agterhuis, *supra* note 70, at 10-11 (arguing that although some scholars have limited the ICCPR 12(4) right of return as a group right and there is nothing to indicate the drafters' intent to include a group right, nothing in the *travaux préparatoires* or subsequent resolutions prevents a group from asserting the right).

173. Presumably, if given adequate time to allow any interested individual a right of return, that individual would be unable to assert it at a later time due to abandonment. See Agterhuis, *supra* note 70, at 30.

174. See BOLING, *supra* note 57, at 19 (detailing Palestinian right to just compensation as a right within the right of return).

175. Joshua Yaffa, *The Waste and Corruption of Vladimir Putin's 2014 Winter Olympics*, BLOOMBERG BUSINESSWEEK (Jan. 2, 2014), <http://www.businessweek.com/articles/2014-01-02/the-2014-winter-olympics-in-sochi-cost-51-billion>.

population now that the games are over and would prevent the waste that so many Olympic sites incur after the games.¹⁷⁶

V. CONCLUSION

The Caucasian War that concluded in 1864 resulted in the systematic removal of almost the entire Circassian population that had inhabited the Caucasus Mountains for millennia. Circassians have spent the last 150 years bereft of their ancestral homelands with no ability to repatriate. Similar to other expelled groups, Circassians maintain a right to return to their ancestral homelands under ICCPR article 12(4). This right extends to subsequent generations of Circassians who are able to demonstrate a genuine connection to the northwest Caucasus region under *Nottebohm*. Many Circassians have demonstrated this connection by continuously reasserting land rights, maintaining cultural ties, and raising awareness of the Circassian plight during the Caucasian war.

Unfortunately, Russia's Compatriot Law has fallen short of meeting Russian obligations to allow Circassians the right of return under ICCPR article 12(4). First, the law fails by excluding Circassians from the law's definition of compatriots. Second, it contains several requirements that would likely prevent Circassian right of return, such as Russian language and familiarity with Russian culture.

Russia has several options to meet its obligations under ICCPR article 12(4). It can amend the current Compatriot Law to remove language and cultural barriers, and to allow applicants the ability to repatriate to ancestral homelands. It must also reverse its official position on Circassians as compatriots or accept responsibility for Circassian repatriation through the law of state succession. Alternatively, Russia may create a new law that would allow Circassian right of return. A new law would require provisions that would permit eligible Circassians to safely return to the northwest Caucasus region without undue hardship.

176. See Jessica Blumert, Note, *Home Games: Legal Issues Concerning the Displacement of Property Owners at the Site of Olympic Venues*, 21 *CARDOZO J. INT'L & COMP. L.* 153, 154-55 (2012) (describing Olympic sites as massive infrastructure projects that often hurt more than help local communities).

The Winter Olympics in Sochi provided a spotlight for Circassians to alert the world to what is largely considered an untold chapter of tragedy in human history.¹⁷⁷ Russia has even proposed hosting the 2018 World Cup in Sochi, boasting the city and surrounding area as UNESCO World Heritage Site filled with undisturbed scenic beauty.¹⁷⁸ The Russian President's commitment to a modern, multi-ethnic "new Russia" will be tested.¹⁷⁹ Indeed, Russia's overdue obligations to Circassians have left Putin to decide "if he is to be Putin the Terrible or Putin the Enlightened."¹⁸⁰

177. News articles came out with great frequency about the Circassian genocide during the 2014 Winter Olympics. *See, e.g.*, Peter Schwartzstein, *The Lost Tribe of Sochi*, THE DAILY BEAST (Feb. 9, 2014), <http://www.thedailybeast.com/articles/2014/02/09/the-lost-tribe-of-sochi-russia-s-circassian-diaspora.html>; Alexander Smith & Ghazi Balkiz, *Who Are the Circassians, and Why Are They Outraged at Sochi?*, NBC NEWS (Feb. 7, 2014), <http://www.nbcnews.com/storyline/sochi-olympics/who-are-circassians-why-are-they-outraged-sochi-n23716>.

178. *2018 FIFA World Cup Russia: Destination-Sochi*, FIFA, <http://www.fifa.com/worldcup/russia2018/destination/cities/city=35268/> (last visited Sept. 22, 2014).

179. Ahmed & Martin, *supra* note 167.

180. *Id.*