

PAPUA NEW GUINEA

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW, 39TH SESSION OF THE
UPR WORKING GROUP, NOVEMBER 2021

ISSUES RELATED TO REFUGEES, PEOPLE SEEKING ASYLUM, AND
IMMIGRATION DETENTION

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ABOUT ASIA PACIFIC REFUGEE RIGHTS NETWORK

The Asia Pacific Refugee Rights Network (APRRN) is an open and growing network consisting of more than 450 civil society organisations and individuals from 38 countries committed to advancing the rights of refugees in the Asia Pacific region.

APRRN aims to advance the rights of refugees and other people in need of protection through joint advocacy, capacity strengthening, resource sharing, and outreach. APRRN envisions a region in which all people in need have equal and adequate access to assistance and protection, and to timely durable solutions as relevant. We envision a region in which refugee communities, civil society, UNHCR, States (including those outside the region) and other actors collaborate effectively towards the common purpose of protection.

ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

PAPUA NEW GUINEA

Submission to the Universal Periodic Review 39th Session of the UPR Working Group, November 2021

Issues Related to Refugees, People Seeking Asylum and Immigration Detention

1. INTRODUCTION

- 1.1 This submission has been prepared by the Asia Pacific Refugee Rights Network (APRRN) and the Global Detention Project (GDP) for the third cycle Universal Periodic Review (UPR) of Papua New Guinea (PNG) in November 2021. In preparing this submission, APRRN has drawn on the expertise of two of its members: Refugee Council of Australia and Caritas PNG (which works directly with refugees in PNG through the support of Catholic Bishops Conference of PNG and the Solomon Islands).
- 1.2 The submission focuses on human rights concerns relating to PNG's treatment of refugees and people seeking asylum, including its use of immigration detention.
- 1.3 There are three categories of refugees and asylum seekers living in PNG:
 1. People who have been transferred to PNG by Australia as part of the 2013 Regional Resettlement Agreement between the Governments of Australia and PNG.
 2. West Papuan refugees and asylum seekers, many of whom have lived in PNG for more than three decades.
 3. A small group of refugees and asylum seekers who have arrived spontaneously in PNG.
- 1.4 This submission focuses primarily on the situation of the first group, with some references to the second group.

2. RELEVANT RECOMMENDATIONS FROM THE 2ND CYCLE UPR AND THE STATUS OF THEIR IMPLEMENTATION

- 2.1 During the 2nd cycle of the Universal Periodic Review (25th session, May 2016), PNG examined and supported a number of recommendations relevant to human rights of detained asylum seekers, including:
 - Ratify international human rights treaties such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ghana, Guatemala, Honduras, Philippines, Sierra Leone, Turkey) (para. 104.17, 104.18, 104.19) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Czech Republic, Denmark, France, Ghana, Guatemala, Honduras, Italy, Timor-Leste, Montenegro, Panama, Portugal, Sierra Leone, Slovenia, Turkey, Uruguay) (para. 104.6, 104.7, 104.11).
 - Investigate allegations of excessive use of force by police officers, and ensure that law enforcement officials have the appropriate human rights training (Sierra Leone) (para. 104.130). Ensure those investigations are independent and impartial (Switzerland) (para. 104.131).

- Establish a National Human Rights Institution (NHRI) in accordance with the Paris Principles (Australia, Brazil, Egypt, France, Honduras, Indonesia, Kyrgyzstan, Maldives, Netherlands, New Zealand, Philippines, Portugal, United Kingdom) (para. 104.35-104.47).
- Uphold the United Nations Standard Minimum Rules for the Treatment of Prisoners in places of detention (Canada) (para. 104.92) and combating inadequate detention conditions (Algeria) (para. 104.93).¹

2.2 During the same cycle of the UPR, PNG received several relevant recommendations that it did not accept, including:

- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and/in order to create a national preventive mechanism carrying out periodic visits to all places of detention (Czech Republic, Italy, Ghana, Guatemala, Honduras, Panama, Portugal, Turkey, Uruguay) (para. 104.12, 104.14). PNG responded that it needed to ratify the CAT first.
- Improve (reproductive) health care provision to migrants and asylum seekers to reduce maternal, child and infant mortality (Thailand) (para. 104.146). PNG responded that access was already provided and supported.
- Ensure that the human rights of detained migrants and asylum seekers under relevant international norms are respected (Mexico, Sweden) (para. 104.159, 104.161). PNG responded that a legal framework and relevant guidelines were already in place, and that it continued its efforts to safeguard the human rights of migrant and asylum seekers.
- Cease mandatory detention of asylum seekers (Sweden) (para. 104.161). PNG responded that this had already been actioned in response to the April 2016 Supreme Court ruling that detention of asylum seekers at the Manus Island Regional Processing Centre was unconstitutional.²

2.3 We are deeply concerned about the lack of progress with the implementation of the recommendations the PNG Government accepted in the previous UPR cycle. PNG has failed to adopt key human rights treaties that can provide protection to non-citizens, including in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

2.4 The excessive use of force by police officers and security forces remains rampant and (as will be elaborated later in this submission) caused significant physical and psychological harm to refugees during their forcible evacuation from Lombrum Regional Processing Centre (RPC) on Manus Island in November 2017.

2.5 PNG is yet to establish a national human rights institution in accordance with the Paris Principles. This is despite the fact that in its National Report submitted in the lead up to the first cycle of Universal Periodic Review (in 2011), the PNG Government committed to the establishment of a National Human Rights Commission.³ This is also despite the fact that the Government accepted the recommendations from a number of countries during the second UPR cycle to do so. The creation of such an institution can assist in tackling not only the issues relevant to refugees and people seeking asylum but also other human rights issues that the country grapples with.

2.6 The treatment of the men who were taken to Bomana Immigration Centre in July 2019 was in clear violation of the United Nations Standard Minimum Rules for the Treatment of Prisoners in places of detention. The fact that the men were kept incommunicado for several months without access to their lawyers, friends and family violated rules 58 and 61. The co-location of some of the men for several days with convicted criminals in Bomana jail was in violation of rule 11 and the treatment of those with severe mental health concerns in violation of rule 109.⁴

3. INTERNATIONAL INSTRUMENTS

3.1 When acceding to the 1951 Refugee Convention, the Government of PNG made seven reservations.⁵ In 2013, the Government withdrew those reservations in relation to the refugees subject to offshore processing.⁶ We understand that the Government does not apply in practice any of those reservations to any of the categories of the refugees in PNG. Despite this welcome practice, these reservations remain in law for refugees who have not been transferred by Australia, restricting their rights.

3.2 As mentioned earlier, PNG has fallen behind on its commitment to ratify the Convention against Torture and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Ratifying the Optional Protocol to the Convention against Torture is equally vital, as the establishment of a National Preventive Mechanism introduces much-needed independent oversight of the places of deprivation of liberty, including immigration detention centres.

Recommendations:

3.3 We call on the PNG Government to:

- Formally withdraw the seven reservations to the 1951 Refugee Convention in full and for all refugees.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
- Ratify the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and its Optional Protocol.
- Establish a National Human Rights Institution in accordance with the Paris Principles
- Take genuine steps to implement the recommendations it accepted during the previous UPR cycles.

4. REFUGEES TRANSFERRED TO PNG AS PART OF THE 2013 REGIONAL RESETTLEMENT AGREEMENT WITH GOVERNMENT OF AUSTRALIA

4.1. Background information

4.1.1 In April 2016, the Supreme Court of PNG ruled that the detention of asylum seekers at the Lombrum RPC on Manus Island – initially established in 2001 as part of Australia’s “offshore” asylum processing system – was unlawful because it was contrary to the right to liberty as provided in PNG’s Constitution. The court ordered the Australian and PNG governments to cease the detention of asylum seekers at the centre.⁷ The centre converted to an open centre in May 2016 before fully closing in October 2017.⁸

4.1.2 At the time of the RPC’s closure, it still housed 690 men,⁹ who initially were gradually transferred to three centres near Lorengau town on Manus Island. Those centres were East Lorengau Refugee Transit Centre, West Lorengau Haus, and Hillside Haus. In November

2017, the remaining 328 refugees at the Manus Island RPC were forcibly moved to those centres.¹⁰ In August 2019, the PNG Government offered to relocate all refugees and people seeking asylum to Port Moresby, where they now remain.¹¹

4.1.3 In total, Australia sent more than 4,000 people to PNG and Nauru after it began offshore processing in 2012. Of this number, 949 people have been returned to their countries of origin, both voluntarily and involuntarily.¹² According to the Australian Department of Home Affairs, as of 28 February 2021, a total of 130 people subject to offshore processing remained in PNG.¹³

4.1.4 In November 2016, Australia made an agreement with the United States of America to resettle up to 1,200 refugees from PNG and Nauru. As of 28 February 2021, 928 people have been resettled to the United States, 418 of whom directly from PNG.¹⁴ It is now estimated that the final resettlements will take place in March or April 2021.¹⁵ In addition, in October 2020, the Australian Government said that around 80 people were expected to remain on Nauru and PNG following the end of the resettlement deal.¹⁶

4.2. Current issues

4.2.1 It is our position that the transfer of refugees and people seeking asylum from Australia to PNG does not extinguish the legal responsibility of Australia for the protection of these people. However, the continuation of this arrangement and the responsibility of PNG in aiding and abetting the mistreatment of asylum seekers, in collaboration with Australia, has been a source of profound international concern.

4.2.2 In effect, although the Supreme Court ruled that the detention of asylum seekers was unconstitutional in 2016, the conditions for the re-emergence of harmful detention practices remain, as does the possibility of the revival of third-country offshoring practices in the absence of clarity over who has the duty of care and responsibility in these situations.

4.2.3 The transfer of people in 2017 from Lombrum RPC to the three centres near Lorengau town did not result in genuine improvements. Refugees and asylum seekers continued to live in a highly controlled environment where they were subject to a nightly curfew and their movements were monitored by private security personnel. They had to live at those designated facilities and needed to seek permission to live elsewhere. Access to visitors, including human rights organisations, remained restricted. Those who needed medical treatment that was not available on Manus Island needed to go through an approval process to be able to travel to Port Moresby for medical care.¹⁷

4.2.4 Today, not much has changed. Refugees, who now live in Port Moresby, still live a highly controlled life. We continue to hold serious concerns about the treatment and well-being of people who remain PNG.

Issue: significant gaps in support

4.2.5 Those who remain in PNG, eight years after being sent to offshore processing arrangements, face a number of serious issues. These include substandard medical care (especially mental health care), inadequate and unreliable supplies of food and drinking water (with repeated and unexplained cuts) and inadequate case management.

4.2.6. Some refugees with severe mental health issues have been effectively abandoned by service providers. There is no mental health outreach and monitoring program, no trauma-informed case management, and no torture and trauma counselling services. Severe mental health concerns are mainly managed through an enforcement and compliance framework and treated

as behavioural concerns. An example of this is the treatment of a man who tried to end his life in 2019 by setting fire to himself and his room. The PNG police stated that they would charge him with arson and attempted suicide.¹⁸ Under the PNG criminal code, attempting suicide remains a crime which carries a penalty of up to one year in prison.¹⁹

Issue: lack of meaningful opportunities for integration and settlement

- 4.2.7 A small number of people who decided to settle in PNG have faced numerous challenges. Some of those challenges, for example discrimination in the community, are borne out of societal biases. Others are the direct results of PNG entering an agreement with another country (i.e. Australia) without having a proper plan.
- 4.2.8 Refugees report that, when they tried to settle in the community, they have received no support. In fact some have even lost some of the support available to their peers who remain in refugee centres. This included access to subsidised healthcare. They have faced issues with work and travel permits and have no education opportunities.
- 4.2.9 Some of the men started relationships with PNG nationals but faced challenges when trying to register marriages and births of their children. It was estimated in March 2019 that about 40 children have been fathered by men subject to offshore processing,²⁰ although the actual number is likely to be higher. The future of these children remains unclear as there is lack of clarity about the legal rights and even citizenship status of these children whose fathers were 'transitory persons' on Manus Island, some even stateless.
- 4.2.10 In light of the above challenges, there are serious concerns about the fate of those men (and their families) who may not find a third-country resettlement solution. There is fear that they will be left with no rights, support or future in PNG if Australia ends its support for offshore processing arrangements.

Issue: lack of legal provisions for protecting the rights of refugees

- 4.2.11 The Government of PNG has made some welcome decisions that have improved the lives of refugees. They include waiving citizenship fee applications, working with UNHCR to issue travel documents to refugees in order to facilitate their departure for resettlement countries, and adopting a National Refugee Policy.
- 4.2.12 There are, however, some serious gaps in law and policy that limit the rights of refugees. The National Refugee Policy has not been properly implemented. While this policy aims to ensure refugees can work, own businesses, reunite with their families and eventually become citizens, the on-the-ground realities of refugees' lives do not reflect these policies.
- 4.2.13 The ongoing lack of clarity about when and how a refugee becomes eligible for citizenship has created a sense of perpetual limbo for those who consider settling in PNG. There is also lack of clarity about family reunion. In our opinion, the current PNG migration law is not sufficiently nuanced to deal with emerging (and complex) challenges.
- 4.2.14 Challenges in seeking judicial review of negative Refugee Status Determinations present a significant concern and undermine people's right to a fair asylum process. In the early years of offshore processing arrangements, a significant number of asylum seekers did not engage in the process of applying for protection. This was for a variety of reasons, including lack of trust in the system, lack of clarity about future or fear of the consequences of making a protection claim based on sexual orientation given the criminalisation of homosexuality in PNG. They were given negative Refugee Status Determinations and had only 30 days to seek a review of that decision through an independent panel. There was little to no information

regarding available judicial review mechanisms and no pro-bono or subsidised legal support to navigate a complex court system in a new country. Further, the potential cost of launching court proceedings was prohibitive. This made this option out of reach of people seeking asylum. In fact, we understand that so far no person seeking asylum in PNG has managed to seek judicial review of a negative Refugee Status Determination.

4.2.15 This played a key role in the detention of a number of men in Bomana Immigration Centre in 2019, their lack of access to durable solutions, and the increased challenges in daily life in PNG, such as lack of work rights and access to a lower weekly allowance than recognised refugees.

Recommendations:

4.2.16 We call on the PNG Government to:

- Declare its position with respect to any future proposed arrangements to host asylum seekers transferred by third countries.
- Actively work with UNHCR and other governments to identify any available options for refugees subject to offshore processing who are yet to find a durable solution.
- Clarify whether it intends to provide ongoing support for people subject to offshore processing who are still in PNG.
- Commission an independent audit into the provision of services to refugees by health and welfare providers and manner in which these contracts were awarded.
- Investigate the challenges faced by refugees who have chosen to settle in PNG, including the registration of marriage and births of children, access to support, and freedom of movement within the country – and take genuine steps to address these challenges.
- Clarify and codify citizenship and family reunion eligibility and requirements for refugees.
- Provide free or subsidised access to legal representation for asylum seekers with negative refugee status decisions who wish to seek judicial review.
- Review the Migration Act to include provisions that will increase refugee protection.
- Commit to full implementation of the National Refugee Policy.

4.3. Two incidents of significant concern

Use of force by police during the evacuation of Lombrum RPC:

4.3.1 When Lombrum RPC officially closed in October 2017, over 600 people remained in the centre. Some feared for their safety given the new centres were closer to the main town, while others were worried about being abandoned by the Australian Government. However, pressure was placed on them to leave the centre, including through removal of services and supplies (including food and drinking water). At no point was there genuine consultation to understand why people were resistant to relocation. Calls from human rights organisations and international bodies, including UNHCR, to end the humanitarian emergency were not heeded.

4.3.2 What happened on 23 and 24 November 2017 was a serious cause for concern. On 23 November 2017, 50 PNG police and immigration officers entered Lombrum PRC, gave the people inside an hour to leave, threatened them, destroyed their property, and managed to remove some people. The next day the PNG mobile squad officers forcibly removed the remaining people. Footage supplied by refugees at that time showed the significant use of force by police officers and other authorities.²¹ For some men this resulted in long-term damage to their physical and mental health.

Detention of 53 asylum seekers in Bomana Immigration Centre:

- 4.3.3 Bomana Immigration Centre is a transit and removal facility near Bomana prison on the outskirts of Port Moresby, which was funded by the Australian Government (costing AU\$23.2 million) and opened by the PNG Immigration and Citizenship Authority (ICA) on 2 April 2019.²²
- 4.3.4 On 25 July 2019, three asylum seekers were arrested and transferred to Bomana prison (not the immigration centre) where, for the first few days, they were placed in a large cell with convicted criminals. ICA released a public statement advising that they were arrested for 'immigration non-compliance'. In the early hours of 12 August 2019, 50 other asylum seekers were arrested and transferred to Bomana Immigration Centre. In the course of the next few weeks, the other three men who were initially held in Bomana prison joined the group of 50 in Bomana Immigration Centre.
- 4.3.5 Refugee Council of Australia (a member of APRRN) travelled to Port Moresby in November 2019 and interviewed some of the men who had been recently released from Bomana Immigration Centre. They described detention conditions that amounted to cruel, inhuman and degrading treatment. They reported being effectively cut off from the outside world for several months unable to call family or lawyers. Almost no one was able to visit those in Bomana Immigration Centre. UNHCR, local priests and the men's friends were all denied visits despite repeated requests. Most of the compounds did not have air conditioning and the detainees had to sleep in stifling cells in tropical heat. The water in the shower was boiling hot and the food portions were extremely small to the point that many men lost between 10 and 20kg in the first two months.
- 4.3.6 People seeking asylum reported that they were readily given sedatives and spent most of the day sleeping. Self-harm and mental health issues were met with punitive responses, with people usually facing solitary confinement after incidents of self-harm. Only in absolute emergencies were detainees taken offsite to the hospital. There were also consistent reports that those who were transferred to hospital remained under heavy surveillance by guards and were prevented from communicating with others or receiving visitors. Ten men had been approved to travel to Australia to receive medical treatment not available in PNG but were prevented from departing and kept in detention.²³
- 4.3.7 From its earliest days, there were questions about how the facility would operate and under whose custody and jurisdiction. Although financed by Australia, Australia's Home Affairs Department claimed that "the operation of the facility is a matter for the PNG government."²⁴ We believe that Australia has had a degree of responsibility in the operation of Bomana and has authorised (and perhaps encouraged) the enormous pressure placed on detainees to return to their home countries. The PNG Government, however, carries a significant responsibility as well, as it subjected this group to severe and prolonged mistreatment.
- 4.3.8 People reported that they were under significant pressure to sign forms to return "voluntarily" to their home countries. The majority of those in Bomana Immigration Centre were from Iran, which does not accept involuntary return of its nationals. They reported only being able to call their families and move to a compound with more favourable conditions after they had signed an agreement to return. They reported they would lose those concessions if they withdrew their voluntary return request.
- 4.3.9 A great number of people in Bomana Immigration Centre signed return agreement countries effectively under duress prior to their release from detention. In January 2020, the final 18 men held in detention were released.²⁵ In October 2020, the Australian Government confirmed that there was no longer anyone subject to offshore processing held in Bomana Immigration Centre.²⁶

4.3.10 While no men detained in Bomana Immigration Centre were returned to their home countries, the PNG Government came very close to engaging in refoulement. We believe that it was only UNHCR's intervention, arranging for the resettlement of some of the most vulnerable individuals, that prevented this refoulement. The fact that some of the men were swiftly given protection by other countries points to their serious nature of their protection needs.

Recommendations:

4.3.11 We call on the PNG Government to:

- Commit to ensuring that Bomana Immigration Centre is not used for people subject to offshore processing arrangements.
- Refrain from placing immigration detainees in prisons, co-located with convicted criminals.
- Ensure that Bomana Immigration Centre is not used in its current condition for anyone with a deportation order and ensure that the detention of anyone at this facility is for the shortest possible time. The detention facility needs to have appropriate material conditions and people in detention need to be provided with frequent access to means of communications, access to lawyers and visitors and independent detention monitors.
- Commission an independent investigation of the operation of Bomana Immigration Centre in 2019-20 and the circumstances of the arrest of the 53 men detained there.
- Commission an independent investigation of the events of November 2017 and the unlawful use of force by police during forcible evacuation of Lombrum PRC.

5. WEST PAPUAN REFUGEES

5.1 For many years, PNG has been hosting a significant group of West Papuan refugees – 10,000 individuals, according to a UNHCR estimate in 2016. Many of them have been living in PNG for more than three decades. While some have been given residency permits and a smaller group granted citizenship, they are primarily without legal status and have little to no access to any government support.²⁷ Caritas PNG, a member of APRRN, is directly involved in supporting the West Papuan refugees who live in Port Moresby and Kiunga in PNG's Western Province. Around 130 families live in three main camps in Port Moresby, situated on land where living conditions are appalling. In December 2019, 143 refugees (comprising about 40 families) crossed the Indonesia-PNG border to Kiunga and have been relocated to lowara camp.

5.2 The main issue of concern related to West Papuan refugees in PNG is the lack of legal recognition, which has resulted in restriction of other rights and a lack of support. While, as mentioned, some members of this group have had their status regularised, the majority lack official government documents to prove their status as refugees.

5.3 There are significant restrictions placed on this group. They have no freedom of movement and, despite their growing numbers (primarily due to births), they continue to live in overcrowded camps with unsuitable living conditions.

5.4 At least half of the working age population is unemployed. The refugees face significant challenges in accessing healthcare and education due to lack of financial means. This has created a cycle of disadvantage as lack of education opportunities hampers the refugees' ability to secure employment and gain financial independence. Lack of land and employment has also resulted in chronic food insecurity for this group.

5.5 The refugees who live in Port Moresby face the threat of homelessness. In June 2020, an eviction notice was served on the residents of Waigani camp, one of the three camps in the capital. A demolition notice was also served to the residents of Rainbow camp.

Recommendations:

5.6 We call on the PNG Government to:

- Regularise the legal status of all West Papuan refugees and issue them with proper documentation.
- Provide support to this group to ensure they have access to meaningful employment and financial independence.

ENDNOTES

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- ⁴ United Nations Office on Drugs and Crimes, "The United Nations Standard Minimum Rules for the Treatment of Prisoners," https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-book.pdf
- ⁵ Those reservations are: Article 17(1) [wage-earning employment], Article 21 [housing], Article 22(1) [public education], Article 26 [freedom of movement], Article 31 [refugees unlawfully in the country of refuge], Article 32 [expulsion] and Article 34 [naturalization].
- ⁶ See the text of the notification of withdrawal here: https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&lang=en#EndDec
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- ¹³ Department of Home Affairs, "Key Statistics as at 28 February 2021," 1 March 2021, <https://www.homeaffairs.gov.au/about-us-subsite/files/population-and-number-of-people-resettled.pdf>
- ¹⁴ Department of Home Affairs, "Regional Processing and Resettlement," 11 March 2021, <https://www.homeaffairs.gov.au/about-us/what-we-do/border-protection/regional-processing-and-resettlement>
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- ¹⁹ Clause 311 of PNG Criminal Code Act 1974, http://www.paclii.org/pg/legis/consol_act/cca1974115.rtf
- ²⁰ N. Whiting, "Babies of Refugees on Manus Island Eligible for Transfer Under Medevac Bill, But Confusion Reigns," *The ABC News*, 9 March 2019, <https://www.abc.net.au/news/2019-03-09/babies-of-refugees-on-manus-island-eligible-for-medical-transfer/10879596>
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