

# The impact of securitisation on marginalised groups in the Asia Pacific: Humanising the threats to security in cases from the Philippines, Indonesia and China

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**Abstract:** *Securitisation has a disproportionate impact on marginalised groups. This article examines the impact of securitisation on four groups of people: the poor and children in Duterte's 'war on drugs' in the Philippines; female North Korean refugees in China; and the LGBTI community in Indonesia. The article argues that the term 'security threats,' as used by Buzan, does not adequately describe the consequences of securitisation. The term 'human threats' is more suitable as it demonstrates that state securitisation impacts humans and their rights, and that the existential threats have real-life consequences. This is demonstrated in the case studies. First, the war on drugs in the Philippines has been killing the poor and detaining children rather than eliminating drugs. The securitisation of China's border with North Korea results in many women becoming victims of trafficking, forced marriage and other forms of gender-based violence. Religious groups consider LGBTI communities a threat to national security and, as a result, their personal security and access to government services (such as education) is threatened.*

**Key words:** securitisation; war on drugs; age of criminal responsibility; North Korean refugees; LGBTI rights in Indonesia

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## 1 Introduction

A frequently-omitted feature of increased securitisation in the Asia Pacific is the impact on marginalised communities. When states strengthen their security laws and increase the powers of the security forces, the results are disproportionately felt among the marginalised, with common examples being the branding of Muslims as terrorists; migrant workers as criminals; and indigenous minorities as destroying the environment. A security analysis too often avoids the uncomfortable truth that the objective of securitisation has little to do with the people who find themselves targeted by these activities. This article examines cases of people who suffer as a result of securitisation, demonstrating that in most circumstances it is hard to justify these threats as security threats. The case studies in the article – human rights defenders; children; women refugees; and the lesbian, gay, bi-sexual, transgender and intersex (LGBTI) community – demonstrate that in many cases, securitisation does not involve the safety and security of a nation, but rather the articulation of moralistic or ideological views most frequently used by weakening democratic states to support political power. But why, and how, are these groups constructed as threats? As the article outlines, there is a widespread use of discriminatory speech (and even hate speech) which gains widespread support. Next, there is scant questioning by security forces about the threats to security. In many cases it, is not clear whether the threats are deliberately constructed, or whether they are the result of incompetence and poor management. The act of securitisation itself is the focus, not those subject to the security force. The article examines the human rights violations faced by these groups and provides a context to their construction as a threat, and how actions against them are justified.

To understand this dilemma, one may critically engage with Buzan's orthodox model of securitisation. For Buzan, a security threat has three elements: an existential threat; needing emergency action; which emergency action justifies extraordinary responses going beyond usual rules and regulations to tackle the emergency (Buzan et al 1998: 23-24). The article focuses on the construction of an existential threat by dividing the threat into two key parts: an existential threat; and a human threat. First, an existential threat is defined by the security sector, as a discursively constructed object which the sector seeks to control through extraordinary powers. Second, this research employs the term 'human threat' to define the actual people who become targets of security. That is, the humans who face the consequences of the security sector force in any way, but most commonly as a violation of rights, regardless of their complicity in the threat itself.

Identifying the 'human threat' component of a security concern has a number of objectives. First, it is important to refigure the operations of the security sector into impacts on humans because, ultimately, if we are to implement a human security analysis, security should be for the protection of humans, and not abstracts concepts such as states, identities or beliefs. The impact on humans is too frequently sanitised with terms such as 'collateral damage', which dehumanise the consequences and avoids addressing the human rights violations. Second, having the human as the unit of analysis for the impact of security enables the consequences to be translatable into human rights. The object of security is the human, but

both as a target and as that which should be made more secure. As the case studies will show, these two roles may seem to be diametrically opposed, but often security actions have the ability to place that which should be made more secure as that which is the target of the security. The case of children in the Philippines is a good example. Their 'rescue' from dangerous streets by the security sector does not protect them, but renders them targets of abuse and violence by security forces. Third, the term 'human threat' shows that what is represented as the existential threat does not come into existence during the operationalisation of the security. Existential threats (which more accurately could be called transcendental threats) are used to distract people from the attacks on humans which are the reality of the action. An existential threat is often unrelated to those who suffer the consequences of the security force, regardless of whether the actions are deliberate or unintended. For example, the LGBTI community is considered a threat to Indonesian national identity. It is difficult to figure how 'Indonesian-ness' can be threatened by whom someone chooses to love, but the consequences are that nationalism is converted into homophobia. Finally, the term 'human threat' forces the security analysis to confront the reality that the function of security is to attack humans. There will be humans who will face violence, and who may be killed as a result of increased security, and this cannot be camouflaged by the use of existential terms.

This article examines four case studies of existential and human threat. Two of these cases emanate from the recent war on drugs in the Philippines, which sees drugs and crime as the existential threat. However, as the case studies outline, the human threats are human rights defenders, who are deliberately targeted by the security sector, and nine to 15 year-old children, who will be criminalised by a law under consideration by the government. Another case study is of the human threat of female North Korean migrants in China. Many of these women could be recognised as refugees, but they are constructed as an existential threat by being categorised as illegal economic migrants involved in criminal activities. The final case study is that of the human threat of the LGBTI community in Indonesia, who are branded as an existential threat to the nation's morality because of their 'lifestyle'. In examining these four groups, the objective of this article is not to remodel security studies but, rather, to incorporate a rights-based analysis of security to show the discriminatory, ideological or political dimensions of security. It is widely accepted that the increase in power afforded by these security laws are frequently abused by states, especially in the Asia Pacific region. Similarly, few would contest the fact that the consequences are significant human rights violations. Securitisation results in the restriction of political space for assembly, association, and freedom of expression for groups such as political opponents or human rights defenders. It creates undue burdens on the freedom of movement, especially between countries, for migrants (and this includes both those migrating for work or who are forced migrants); and it allows the unchecked powers of the police to target the marginalised.

This article understands the concept of securitisation as a state increasing the powers of its security forces in response to an articulated threat. Securitisation commonly occurs as laws, policies and campaigns articulate a threat, and increase the powers and scope of security force action. A crucial component is the process of constructing the threat by creating a fear to justify excessive security measures and the limitation of

rights. The security forces predominantly are the military and police, but also it may include immigration, local government and welfare officers. An important reminder is that the abuse of power is not only by the state, as the manipulation of securitisation by non-state groups through vigilante groups also threatens personal security, as the examples in this article of North Korean women in China and LGBTI activists demonstrate. Other forms of non-state securitisation threats include the incitement to violence through social media, which can target minority religious, sexual or ethnic groups.

In the Asia Pacific region, it is assumed that securitisation becomes a concern, especially for human rights, in the post 9/11 era when many states introduced counter-terrorism laws. Many have acknowledged that the post 9/11 world is a different one for human rights (Goodhart & Mihr 2011; Dunne 2007), because of the growth in the strength and number of anti-terrorism laws, police powers and legal limitations to civil society activity. There are active regional level counter-terrorism activities, with both the Association of Southeast Asian Nations (ASEAN) and South Asian Association for Regional Co-operation (SAARC) having agreements on counter-terrorism.<sup>1</sup> All these laws, in the name of security, are used to expand special investigative powers, such as stop and search; allow preventative arrests and arbitrary detention; and increased surveillance. However, it cannot be argued that these new laws are in response to post-9/11 terrorism as most of these laws existed, in a variety of formats, before 2001. There has been a re-tooling of pre 9/11 security laws to either continue or expand existing powers, for example, the Internal Security Laws in Malaysia; public emergency and the *Les Majeste* laws in Thailand; and terrorism in Sri Lanka which have been re-invigorated or updated.<sup>2</sup> The laws originally emerge in the Cold War or colonialism as a response to the threats of communism or self-determination. However, at the end of colonialism or the Cold War, rather than considering the end of the threat and thus deleting the laws, states went through a process of inventing new existential threats to justify these laws. A logic reversal is in operation here: Security is not introduced in response to a threat; rather, a threat is created to justify security.

Before examining the case studies, more context should be given to security threats in the region. Although the Asia Pacific as a region is far too diverse to make claims of regional trends, there are some points of similarity in the actors and processes. The first is the role played by the military and police in governance. A generalisation is that Southeast and East Asia have a history of military governance. In Southeast Asia, all

1 There are two regional conventions: the SAARC Regional Convention on the Suppression of Terrorism, and the ASEAN Convention on Counter-Terrorism (ACCT). Furthermore, many, if not most, Asia Pacific countries this century introduced terrorism laws. There are too many to note, but laws that have received criticism include Indonesian and Indian laws in 2002, Chinese in 2016, and Sri Lankan laws recently in 2017. Criticisms of these laws include Mendoza (2011) and Masferrer 2013.

2 In Malaysia, Internal Security Laws include the old Internal Security Act (ISA) which has now been replaced by the Security Offences (Special Measures) Act 2012 (SOSMA). In 2016, it was used to arrest 15 prominent civil rights activists who, it was claimed, were terrorists. Maria Chin Abdullah, an organiser of the Bersih rally, was arrested by the Royal Malaysian police under this law which allowed her detention for 28 days before filing any charge. Similarly, Vietnam, China and, especially Singapore, use administrative measures to detain suspects (and often democracy or human rights activists) with minimal judicial review and little apparent controversy.

countries, except Singapore and Malaysia, have suffered military governments. The military apparatus, commercial interests and governance are often intertwined, thus making the introduction of securitisation easier because of military control of courts, government and the security apparatus. Securitisation through the police has different features, as it is often expressed through quasi or extra-judicial actions, using non-state actors, such as vigilante groups. An example is 'fake encounters' in South Asia, where suspects are killed by security forces in supposed acts of self-defence. There are no accurate numbers, although some regions, such as Manipur in India, have reported nearly 2 000 people killed through fake encounters in the past 10 years (Ambast 2016).<sup>3</sup> Other contributing factors include a weak rule of law and an ineffectual court system, encouraging police to use extra-judicial measures against suspects as they do not trust the legal system.

A last important context in terms of securitisation is migration. Throughout the Asia Pacific, there are many countries with high numbers of non-citizens, either as refugees or migrant workers. Almost all these countries have active anti-foreigner advocates, often the government itself, for example, in Australia, one of the few countries to detain refugees – even children. In other countries, it is social discourse with media reporting on claims that crime, disease and social tension is brought on by migrants. This article now turns to the case studies, firstly examining how the Philippines war on drugs has created human rights defenders and children as human targets.

## 2 War on drugs and human rights defenders

The Philippines government's populist leader, President Rodrigo Duterte, has been dubbed 'the Punisher' for his harsh anti-crime activities dating back to his time as the mayor of Davao City in Mindanao Island. Now known for his war on drugs campaign, Duterte has faced criticism from the international community for the widespread human rights violations during this campaign. To further strengthen the war on drugs, Duterte had also prioritised two house Bills currently being addressed in government: reinstating the death penalty and lowering the minimum age of criminal responsibility (Dalangin-Fernandez 2016). Despite the country in 2007 ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at the abolition of the death penalty, the Philippines is on the brink of reinstating the death penalty targeting drug-related cases (Morallo 2017). Moreover, the legislative body also aims at lowering the minimum age of criminal responsibility from 15 to nine years, disregarding the country's obligation as a party to the Convention on the Rights of the Child. The congressman who filed the Bill, and those supporting him, believe that children are used as drug runners as they cannot be held liable for a crime (Baylon 2016). To further promote the campaign on the war on drugs, Duterte himself has been overtly vocal on eliminating drugs and drug personalities in his campaign and presidential

3 Some policemen and security forces have a reputation of creating fake encounters, such as Bangladesh's Rapid Action Battalion which has been described as a 'government death squad' by Human Rights Watch (2014). Other examples include individual policemen, such as Pradeep Sharma in India, who has allegedly killed over 300 people in 'encounters'.

speeches. The war on drugs is necessary, he claims, to ensure 'peace and progress' in the Philippines (Ranada 2017; Human Rights Watch 2017). The current administration's objective to increase public safety and security from drugs and crime is enacted through the 'Oplan: Double Barrel' campaign by the Philippines National Police. Actions include targeting both so-called 'high-valued targets' and street-level drug peddlers (Cupin 2016). The use of terms is important, as the existential threat is said to be the drug traffickers and sellers but, as critics argue, the human targets of the campaign do not fit this category, in particular children and human rights defenders. Of greater concern is the fact that the means used often are illegal with the use of planted evidence; attacking users; buy-bust operations; and vigilante-style killings. The consequence of Duterte's regime are devastating for the marginalised, with over 7 000 deaths associated with the campaign from July 2016 to January 2017, through both vigilante-style executions and legitimate police operations (Bueza 2017).

The current administration promotes the message that drugs are a threat that contributes to the rise of criminality and threats to personal security, and this needs to be addressed immediately through special police powers that ignore established rules of law. The underlying factors, such as social problems leading to the proliferation of drugs, are dismissed as irrelevant. Duterte has claimed that there are 4 million drug users (a false claim to which we will return), and that he would 'slaughter these idiots [drug addicts] for destroying my country' (Muggah 2017). According to public opinion, most people are positive towards the war on drugs (Romero et al 2017).<sup>4</sup> The selling point is Davao City, where Duterte worked in as mayor, vice-mayor and congressman for 22 years before his current position. Davao is claimed to be the safest city in the country, a claim repeated by the supporters of the war on drugs.<sup>5</sup> During Duterte's term as mayor, he was believed to have reduced crime through the use of killings done by the infamous Davao Death Squad, claiming over 1 424 lives, including those of street children, from 1998 to 2015 (Picardal 2016).

The severity of the Philippines drug problem has been widely disputed. The United Nations Office on Drugs and Crime (UNODC) World Drugs Report reveals that drug use in the Philippines is not that much different from other Southeast Asian countries, and is less than in developed countries such as the USA (Lasco 2016). Rather than the four million users claimed by Duterte, the World Drugs Report measures about 1.8 million. The UNODC confirms an increased methamphetamine abuse (locally known as *shabu*) in the Southeast Asian region, with special reference to the Philippines, but the use of other drugs is the same or lower than in other Southeast Asian countries (UNODC 2015: 69-70). The extra-judicial killings have been perceived as highly discriminatory, the human targets being mainly poor urban slum dwellers, with Amnesty International claiming it is a 'war on the poor' (Wells 2017). Rather than being distracted by existential threats, it is crucial to focus on the human targets of this action.

4 The accuracy of public opinion has been widely questioned. See Parameswaran (2016).

5 This claim has been criticised as the ranking is dubious. See Rodriguez (2015).

When looking at the way in which human targets are constructed, a critical component is Duterte's repeated use of hate speech in defining the threat. Openly promoting killings and impunity for the perpetrators leads to an environment where criminal offenders do not fear reprisals for their acts. Moreover, according to international reports, some perpetrators are rewarded with monetary payments for these killings (Human Rights Watch 2017: 88-89; Amnesty International 2017: 30-32). Hate speech dehumanises the victims, and justifies the excessive use of force with claims similar to 'fake encounters', that victims were 'fighting back' and were killed in self-defence. Two human targets are examined here, namely, human rights defenders and children.

The violence during the war on drugs is being manipulated into a political programme to target human rights defenders and those critical of the Duterte regime, a point made by both Human Rights Watch and at the United Nations (UN) Human Rights Council (Human Rights Watch 2017: 86-93; UN Human Rights Council 2017: para 40). Since the inauguration of Duterte, the number of killings of human rights defenders has increased. In the first quarter of 2017, there were 15 killings of activists, twice as much as in previous years (Front Line Defenders 2016: 14; Front Line Defenders 2017; Global Witness 2016: 9) The European Union (EU) for many years has considered that there is evidential proof of the involvement of Philippines authorities in the killing of human rights defenders (European Parliament 2009: para G). Impunity for the perpetrators is an underlying factor contributing to the number of killings (Global Witness 2014), and it is actively promoted by Duterte, who has promised to pardon every person being involved in killings under the war on drugs. This pardon includes the killing of human rights defenders as they are regarded as a hindrance to the 'success' of this rigid policy (Amnesty International 2017: 48, 53). In November 2016, the President stated: 'I will include you [human rights workers] because you are the reason why their [drug users] numbers swell' (Amnesty International 2017: 53). The violent rhetoric grew over time, with Duterte later stating that he would behead human rights defenders who try to challenge his policy (Garganera 2017). Given the fact that Duterte has kept his word with regard to the impunity of perpetrators, Andrew Anderson, the executive director of an organization aimed at protecting human rights defenders, Front Line Defenders, considers this to make the Philippines the most dangerous country for human rights defenders outside the Americas (Amnesty International 2017: 7; Front Line Defenders 2017).

The threats aimed at human rights defenders jeopardise their position as the last level of protection for those facing the impact of securitisation action in the war on drugs. As the government is complicit in the threats to human rights defenders, an important question arises as to who can protect human rights defenders from the threats of security. If human rights defenders cannot protect themselves, there is little chance for them to help others whose rights are threatened. Although protection comes in many forms, human rights defenders protect themselves through networks such as the UN Human Rights Defenders Protection Regime (Bennett 2015; Bennett et al 2015: 883), or the different international organisations supporting the protection of human rights defenders, such as Front Line Defenders and Forum Asia (Quintana 2012; Schmitz 2010). This support can consist of grants for closed-circuit television cameras, or travelling funds for relocation both inside and outside the country. However, the

most common form is through continued advocacy, which should force the state to be cautious in responding to human rights defenders. However, with the ongoing killings, a culture of impunity has emerged, allowing extra-judicial acts by government forces or paramilitary groups.

### 3 War on drugs and children

A second serious human target of the war on drugs are children, caused by a belief among Philippines law makers that the current law on juvenile justice has been pampering children, resulting in them committing crimes as they know they cannot be held liable; they will not be placed in prison and are easily released without accountability (Cepeda 2016). The Bill before the Philippines Congress will lower the minimum age of criminal responsibility from 15 to nine. The Bill is directly linked to the war on drugs, as law makers claim that children form part of the distribution network of drugs, and their immunity from the law enables drugs to be widely transported and sold. The Bill will reverse gains made for children's rights through the Juvenile Justice and Welfare Act of 2006 (JJWA), passed ten years ago after pressure from child rights advocates demanding a Bill that will keep children out of the adult justice system. The JJWA increased the age of criminal responsibility from nine to 15, as juvenile offenders as young as nine were previously placed in prison with adult criminals. The JJWA is based on the principles of restorative justice, prevention, intervention, rehabilitation and diversion from courts, and is seen to be broadly in compliance with existing human rights for children. The slogan 'a jail is no place for a child' was used by the United Nations Children's Fund (UNICEF) and its partners to support the passage of the JJWA, and since then there has been an improvement in the juvenile justice and welfare system. This is seen in the successful diversion from courts, intervention and rehabilitation programmes which have significantly decreased offences committed by the Children in Conflict with the Law by 70 per cent (ABS-CBN News 2016). These advances threaten to be lost due to the replacement of the JJWA by the new security-conscious law.

Although the JJWA is a laudable law, lapses and gaps in the implementation still resulted in the violation of children's rights. It is relevant to consider these lapses as they will only get worse if the new Bill is passed. As noted by the Chairperson of the Juvenile Justice and Welfare Committee, Tricia Clare Oco, programmes have not yet been fully implemented, and capacity building is ongoing for duty bearers, especially of law enforcement officers (Oco, interview). Some failures identified with the JJWA were a lack of awareness and misinterpretations of the law, and not instituting a proper protection mechanism for children under the custody of security sector forces. Even though the law mandates that children cannot be placed in prison, children are still detained arbitrarily, if not in cells with adults, then in detention cells similar to those of a prison. The lack of effective protection can be seen in the practice of 'rescue' operations. Although these are intended as a police measure to protect children from insecurity on the streets, instead they perpetuate the arbitrary detention of children, during detention bringing an increased risk of the child being physically and/or sexually abused. Rescues are carried out by government agencies, mostly by the Philippines National Police, targeting street children who may be classified as 'children at risk'. Law enforcers tend to blur the distinction between a child at risk from a child



in conflict with the law, even though these two categories clearly are different. As defined in section 4(e) of the JJWA, a child in conflict with the law is 'a child who is alleged as, accused of, or adjudged as, having committed an offence'. Meanwhile, in the same section, a child at risk is 'at risk of committing criminal offences because of personal, family and social circumstances', meaning that the child has not violated any law. A child at risk should not be incarcerated.

A study of street children subject to rescue in Manila described 'rescue' operations as 'indiscriminate', characterised as 'involuntary', 'harmful' and 'ineffective' (Nugroho et al 2008). A typical rescue operation usually involves three stages: 'apprehension; detaining children for processing and/or short-term detention; referral to other institutions, NGOs or released' (Nugroho et al 2008: 10). The term 'rescue' actually is an 'apprehension' (Oco interview, 2017). Substituting apprehension with 'rescue' suggests a child-friendly manner and disguises the maltreatment and abuses of children during these operations. Many 'rescue' operations, according to child rights workers, end up detaining and abusing children. In Davao City, where a curfew ordinance is in operation, police officers and *barangay* (village) functionaries patrol the city, 'rescue' children, and bring them to the custody of the Office of the Quick Response Team for Children's Concerns (Domingo 2016). Although the Office appears as a house, with a 24-hour social worker on duty, the treatment has not been child-friendly. According to one anonymous interview, staff verbally abuse children by scolding or shouting at them; and the conditions are barely liveable with children sleeping on cement floors without mattresses, and housed in rooms with metal bars, resembling prison cells. Furthermore, children can be indefinitely detained if their parents, guardians or adult relatives cannot provide any birth certificate for their release (NGO Social Worker, interview). In some cases, children are not brought to the office but are detained in the *barangay* hall office. During detention, children are abused, both physically and verbally, receive physical injuries, are threatened with guns and weapons, are tasked with cleaning chores, and some girls are sexually abused, during which they are asked to choose *hirap o sarap* (pain or pleasure) in exchange for release (former girl child detainee, interview).<sup>6</sup>

Compared to children at risk, the situation of children in conflict with the law is no better. A recent report by the OMCT (World Organisation Against Torture) and Children's Legal Rights and Development Centre (CLRDC) reveals that children are subject to more harm, abuse, stigma and discrimination (OMCT & CLRDC 2016). Apart from a lack of appropriate intervention and reintegration to the community, children in conflict with the law are often physically and emotionally tortured during arrest at police station detention centres. Children in conflict with the law aged 15 and above, awaiting court decisions, and children aged 12 and below 15 but in need of special protection, are brought into *Bahay-Pag-asa* (which literally translates to 'House of Hope'). Some *Bahay-Pag-asa* were juvenile jails before the JJWA was passed with only a logo and a name change to attempt to comply with the law. Shay Cullen of PREDA

6 'Pain or pleasure' is where the child is forced to choose between pain (physical punishment) and pleasure' (to provide sexual services to the security forces) by a security force member as a form of punishment.

Foundation, an NGO on the Juvenile Justice Welfare Committee, described the living conditions in these temporary shelters as being 'terrible' and 'inhumane' when going with the council on its on-the-spot monitoring of police stations and detention centres (Shay Cullen, interview). A majority of these centres still have rooms with steel bars, resembling prison cells. Children are deprived of basic needs, such as clothing and food, and their emotional and mental needs are also disregarded (Cabildo & Reysio-Cruz 2016). The attitude of the authorities is punitive and not in compliance with the spirit of the law (Shay Cullen, interview). The staff are disciplinarian and place misbehaving children in cells. These conditions are not as *Bahay-Pag-asa* has been presented to the public on television (former child detainee 2, interview 19 April 2017). Furthermore, the process of investigation is often flawed because records such as a birth certificate are not documented; there is no provision of quality intervention and rehabilitation programmes; and there is no access to social workers for the child during the process (Shay Cullen, interview). Children are still being arrested and jailed like adults in cases where security forces find it easier to assume that a child in conflict with the law is over 18 years of age, as recording and charging children can be a tedious and time-consuming operation. During an unannounced visit at Manila City prison, the Philippines Commission on Human Rights found six young people who were minors when they were arrested. The lack of adherence to the presumption of innocence and presumption of minority contributes to having children placed in detention cells with adults in police stations and eventually transferred to prison (Victoria Diaz, interview).

The current administration believes that the crime rate has risen because children are used as drug runners. However, the report by the Philippines National Police on crime rates from 2006 to 2012 reveals that only 1.72 per cent of crimes in total are committed by children aged 14 to 17 years. These crimes are mostly property-related crimes such as theft, and mostly committed by males from poor backgrounds, who may be victims of abuse at home or involved in substance and alcohol abuse (Alhambra 2016). These kinds of crimes are known as survival crimes, where young children commit crimes for their survival. It is rather ironic how children in conflict with the law have to survive the atrocities and abuses during arrest, being detained in *barangay* hall offices, police stations and rehabilitation centres with inhumane living conditions. The juvenile justice system is supposed to promote, protect, and fulfil children's rights and not jeopardise them.

A final threat is the law to lower the minimum age of criminal responsibility. The abuse and violations of children's rights now inflicted on children aged nine to 15 years should it be ceased. This does not take into account the best interests of the child, nor does it promote children's rights, dignity and worth. The few congressmen who believe that the JJWA is pampering children reflect an outlook that is more punitive and security-oriented than child-centred. Legislators argue that lowering the minimum age of criminal responsibility may decrease crimes committed by children, prevent recidivism, and avert children from graduating into adult criminals. However, the problem is the lack of a full understanding and implementation of the JJWA. Children as young as nine years will become scapegoats for the drug problem and human targets of the war on

drugs. The government can also defer taking accountability and mending the lapses of the JJWA.

#### 4 Securitisation of North Korean women refugees in China

The third case study is that of North Korean refugee women, who in recent decades have increased in number in China, as they escape economic stagnation and political repression in North Korea. The North Korean refugee crisis does not receive the same programmatic attention as other refugee flows around the world because of its position in Northeast Asian geopolitics. The neighbouring countries of China and South Korea have little to gain economically and politically by dealing with them, and a response may jeopardise diplomatic relations. Perhaps more apparent is the emphasis on traditional security such as borders, nuclear deterrence and military strength over non-traditional security concerns such as human rights and migration. Finally, refugee organisations have a limited ability to respond as they lack access to areas such as along the North Korea-China border. It is in this already challenging context that these refugees now face the concern of being constructed as a security threat.

There are an estimated 50 000 to 300 000 North Korean refugees in China (Davis 2006; Lankov 2006; Kim 2010; Yoonak 2008), and what makes this group distinct is that they are overwhelmingly women, with estimates that between 70 and 80 per cent of these refugees are women (Enos 2016; Kim 2010).<sup>7</sup> Various theories have been given for the high number of women, including greater economic push factors as they need to find work and food for their family, or that they may have more freedom of movement than men, and, finally the demand for North Korean brides acts as a pull factor (Park 2016). It is important to remember these facts when considering China's response to refugees. China and North Korea both perceive international migration as a key security issue, following a trend of the 'securitisation of migration' (Wæver et al 1993; Bourbeau 2011). As a result, a securitisation 'agreement' between China and North Korea against the border crossers weakens the rights of North Korean refugees. Despite the prevailing view by international law experts and humanitarian groups that North Koreans in China are refugees, the Chinese government does not acknowledge this, but since 1986<sup>8</sup> claims that they are illegal 'economic migrants'. By representing the women refugees as illegal, the security forces can search and apprehend and forcibly repatriate them. As China is a state party to the Refugee Convention, it has a duty to recognise and protect refugees as well as the obligation of *non-refoulement*.

However, by designating the North Korean border crossers as economic migrants, China exempts itself from any legal (and customary) obligations to assist them (Kim 2012). The construction of women refugees as a threat is operationalised with police crackdowns, cash rewards to Chinese citizens for turning in North Koreans, and hefty fines to citizens who aid

7 Like many refugee flows, these numbers are estimates.

8 This is based on the Bilateral Agreement on the Maintenance of National Security and Public Order in Border Area (1986), although it was more strictly enforced since around 2007 when North Korea cut off dialogue with South Korea after they had repatriated about 468 North Korean asylum seekers from Vietnam.

them (Kim J 2012). Further, many of the women refugees are also subject to trafficking, with some estimating that around 70 per cent of North Korean female refugees at some point are trafficked (Davis 2006; Enos 2016; Kim J 2010). Under the slogan of national security and social order, North Korean women who escaped for their survival are turned into criminals and a potential threat to China's sovereignty. The legal justification for China to co-operate with North Korea is on the basis of the 1986 border protocol and the Border Management Hindrance Resolution (1997), which form part of Chinese criminal law. China had increased its securitisation against North Korean women refugees beyond necessary measures. There are reports in the media that Chinese police abuse their power through house-to-house and body searches, as well as arbitrary detention before deportation (Cohen 2014). In 2014, after the murder of three Chinese citizens by a North Korean military officer, border security was operating under new orders to shoot all illegal border crossers refusing arrest (Haggard 2015). These practices reveal how special allowances are made for securitisation to breach human rights.

Crossing the border without state permission is illegal according to North Korean law, and, once repatriated, refugees can face harsh punishment, including detention in labour camps and potential torture. Pregnant repatriated women may be subjected to forced abortions, and babies born to repatriated women are often killed, according to the 2013 UN Commission of Inquiry report (UN Human Rights Council 2013). These practices are driven by racist attitudes towards interracial children, and the intent to punish women who have left the country and have made contact with Chinese men, making the babies 'impure'. Furthermore, Pyongyang extends punitive measures to the families of refugees accused of 'treachery', as a person leaving North Korea without permission may be charged with treason and is automatically seen as a 'betrayor' and a security threat to the regime. Even though it is a state party to the Convention against Torture, China continues its policy of forced repatriation which can result in the torture, inhuman treatment and punishment of those repatriated. By co-operating with North Korea to repatriate these refugees, China is not only violating numerous conventions, but also acts as an accomplice to North Korea's gross human rights violations.

When North Koreans started escaping their country after the great famine of the 1990s, they were frequently given assistance by the locals and especially Chinese Koreans in the border area. However, as security concerns against North Korean refugees were integrated into the policy and laws that label them as a security threat, locals in the border area were also criminalised when they gave any assistance to the refugees. It was reported that, in the context of harsher policies and the accompanying stigma attached to North Korean refugees, some locals on the China-North Korea border have reversed their perceptions and lost their trust towards them (Freeman & Thompson 2011: 27). Chinese mainstream media is selectively reporting North Korean issues. While China is trying to ignore refugee issues as much as possible, it is vocal on North Korea's criminal acts in the border areas. For instance, Chinese state-run media has printed articles critical of North Korea, ranging from the coverage of North Korea's drug smuggling into China to harsh criticism over the kidnappings of Chinese fisherman in May 2012 and again in May 2013 (Feng & Beauchamp-Mustafaga 2015: 41). While willing to acknowledge North

Korean criminal activities, rather than seeing women refugees as a consequence of criminal violations, they are incorporated into the larger problem of a criminal North Korea.

The overrepresentation of women in the refugee population may be a result of the better economic outlook and personal freedoms in China, although another reason is the acute shortage of female brides for Chinese rural bachelors, making them the targets of marriage brokers. This may also cause around 70 per cent of the women to find themselves in a trafficked situation. Women can be subjected to false promises of employment; pressure to marry for survival; abduction; or being sold by family or acquaintances (Davis 2006). Many women sold into Chinese families suffer physical, sexual, mental and emotional abuse and violence while having very little recourse because of their status (Haggard & Noland 2010: 35). North Korean women refugees find themselves as double victims. As illustrated by Davis (2006), women refugees face constant threats of being exposed to law enforcement agents, allowing traffickers and Chinese husbands to further control the women's movements and subordination. Some women prefer to stay in China despite the abuse than to be sent back to North Korea to face punishment or other harsh consequences for their families should they return (Davis 2006: 134).

A number of scholars have pointed out that China's core interest lies in ensuring a stable North Korea, as instability will directly threaten China's economic and security interests (Song 2011: 1137). While the level of securitisation has gradually increased over the past years, the intensity of securitisation, alternating between penalising and neglecting, depends on the political context. Before the 2000s, the Chinese government was more tolerant to North Koreans. However, this changed in 2002, when the Chinese government heightened surveillance and increased deportation of North Koreans after increased attempts by North Koreans to seek asylum by charging into embassies in China (Amnesty International 2004). China is depicting women as human threats to security by reproducing the discourse of illegitimacy and illegality. This diverts the focus away from the fear of a communist regime collapse and potential uprising from other minority groups, including Chinese Korean ethnic groups living on the China-North Korea border. By taking strong action against North Korean refugees, Beijing is signalling a message that any faction attempting to threaten national interest and ideology will not be tolerated. North Korean women refugees are able scapegoats in China's political calculation because they are powerless to defend themselves. Despite international criticism and its obligation as a state party to the Refugee Convention and the Convention against Torture, China continues to repatriate North Koreans on the assertion that they are illegal economic migrants and a human threat.

## **5 When the rainbow bleeds red: Unfurling LGBTI politics and security discourse in Indonesia**

The last case study examines the construction of LGBTI as a security threat in Indonesia. The last few years have seen LGBTI rights evolved from anonymity and stigma to broad and open concern. In some countries, there is a growing recognition of LGBTI rights, particularly in the

Americas (Pew Research Centre 2017), Western Europe (Csaky 2017) and Australia (Barclay 2017). This acceptance has yielded more awareness regarding the interdependence between LGBTI rights and other rights, such as economic development, freedom of expression, political participation and education (Badgett et al 2014). However, this wave of acceptance of LGBTI rights has not reached the shores of Indonesia. This section shows how LGBTI persons are constructed as an existential threat to Indonesian sovereignty, mobilised in the term of 'Indonesianness', with the human targets being LGBTI individuals in the country. While the existential threat is often termed LGBTI 'lifestyles' by anti-LGBTI groups, most commonly religious and political conservatives, the human targets are gay men, lesbian women and transgender persons. Behind the attacks on LGBTI persons is a growing political and religious conservatism that uses the LGBTI threat to consolidate their waning political power.

Dubbed as the world's biggest Muslim-majority country (Jha & Varagur 2017), Indonesia is home to over 200 million people who identify themselves as Muslims. The country practises a more tolerant Islamic view of homosexuality and transgenderism compared to its neighbouring Islamic nations: In Malaysia, sodomy is punishable by a prison term of up to 20 years (Deghan 2011), and Brunei Darussalam is proposing the death penalty for sodomy (Novriansyah 2016). On the surface, Indonesia appears to be LGBTI-friendly due to the non-existence of laws criminalising homosexuality. However, under this façade of legality is a false notion of tolerance, where sexual minorities live under the mantra of 'discretion is security' (Human Rights Watch 2016). While the country can never be described as a utopia for sexual minorities, discretion is a weak shield for the LGBTI community from outright acts of violence (Boellstorff 2005).

Two waves of attacks on LGBTI persons have been identified by Oetomo (2016).<sup>9</sup> The first wave started on 24 January 2016, when Indonesia woke up to the anti-LGBTI banner story of *Republika*, a right-wing tabloid, which read *LGBT Ancaman Serius* ('LGBTI a serious threat'). The article appealed for 'all elements of the society to join hands' to prevent the development of 'LGBTI lifestyles' in Indonesia (Human Rights Watch 2016). Citing research conducted by *Republika* itself, the reporters warned their readers about the growing threats of 'LGBTI lifestyles' found on social media, and also warned parents that they should be more aware of this lifestyle influencing their children. The article borders on hate speech with its use of metaphors which describe LGBTI people in Indonesia as 'a dangerous, collective disease' and 'spreading faster than drugs' (Human Rights Watch 2016). Also on 24 January, the Minister of Technology, Research and Higher Education, Muhammad Nasir, made a statement that university campuses must uphold the 'values and morals' of Indonesia, and that LGBTI-themed student organisations must be banned from existence. Although he would later retract this view on Twitter, it did not stop a flow of government officials and religious groups from joining the anti-LGBTI crusade in the following days (Human Rights Watch 2016). Within a period of two months after the headline and Nasir's statement, 17 state officials publicly made homophobic and transphobic

9 Delivered during his public lecture at the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) World Conference 2016.

remarks, not only towards LGBTI persons, but also towards those institutions that promoted LGBTI rights.

These events have also awakened hard-line Islamist groups who are 'morally' policing people based on real or suspected sexual orientation or gender identity. In Bandung, four days after the publication of the homophobic article in *Republika*, the Islamic Defenders Front (FPI), a non-state religious group which positions itself as Shari'a patrol, raided several boarding houses in the city to search for lesbians (*Taipei Times* 2016). The group also erected 'provocative' banners calling for gay people to leave the city. In the Human Rights Watch report (2016), it was later confirmed that this illegal search and seizure were done with the complicity of local police. Another example is when the *Al Fatah Pesantren Waria* (Islamic boarding school for transgender students) was forced to shut down after decades of operation following protests from the Islamic Jihad Front (FJI) (Muryanto 2016). These hard-line Islamist groups become quasi-state actors when LGBTI organisations must ask their permission when they want to conduct seminars or activities (Human Rights Watch 2016). What started as a public condemnation led to greater vilification when there were calls to criminalise same-sex relations before the Constitutional Court. Described by Oetomo (2016) as the second wave of attack, the law, if accepted, would challenge the privacy, security and freedom of expression of LGBTIs. Indonesian law makers are recommending an anti-LGBTI draft law, stating that it is imperative for Indonesian society to protect itself from the 'LGBT propaganda' (Dewi 2016).

This repression, according to Oetomo and Yulius (2016), can be based on the waning public trust of the people towards the state. In this case, sexuality, especially homosexuality and transgenderism, is being used as a scapegoat to reclaim the lost power over the people. This is not a novel development. Historically speaking, sexuality has been used as an existential threat to generate a crisis for political gains. In the late 1930s in the then Netherlands East Indies, colonial police arrested around 225 men who were suspected of homosexuality (Bloembergen 2011). Both Bloembergen (2011) and Yulius (2016) argue that 'moral cleansing' or *zedenschoonmaak* is a consequence of the decreasing authority of the colonial government planning to restate their power through increased security laws. The 'campaign of virtues' was a desperate measure for the colonial government to reassert its power (Yulius 2016). Whereas the Suharto government used sexual debauchery to reduce women's rights (Wieringa 2011), the current securitisation on sexuality focuses on LGBTI. Hanung notes that the current increase in anti-LGBTI discourse is used for political power: 'Indonesia is in an era where ultranationalists are locked in competition with religious fundamentalists, as both vie for public support in order to win electoral votes – and, by extension, democratic power' (Hanung 2017). One particular recent event is the Jakarta mayoral election where the first Christian governor was jailed for blasphemy. Most analysts see this as a politically-motivated punishment in order to appease religious hardliners (Ming 2017).

The securitisation of sexual minorities is articulated in three registers: heteronormativity; nationalism; and a threat to the family/children. Heteronormativity asserts that natural and traditional gender roles exist which can be found in religious, educational and nationalist discourse (Mosse 1985). Indonesia is a typical example of how masculinity serves as

the icon of the nation's spiritual and material vitality. Thus, those people who fall outside the masculinity standards set by society are seen as enemies of national values; they are an active threat to the normative order of society. At this point, sexuality becomes a security concern. Sexual minorities become threats to 'Indonesianness' and the 'future generation'. These views can be found in the propaganda conflating LGBTI people with violence against children (Oetemo & Yulius 2016). LGBTI rights have moved from the domain of political engagement over rights to the realm of security where extraordinary measures are needed to respond to the threat to sovereignty. The groundless and discriminatory remarks against LGBTI persons have put their lives at risk. The repercussions to LGBTI Indonesians are the violation of fundamental rights such as the rights to privacy, freedom of expression, freedom of assembly and equal protection.

## 6 Conclusion

Regardless of the diversity of the four case studies, some commonalities in securitisation can be found. First, securitisation has a severe and direct impact on disempowered marginal groups. It is difficult to see how the four groups that are attacked by security measures, discussed in this article, could realistically be conceived as threats, given their relative lack of power. Rather, the conclusion must be made that they are attacked through securitisation precisely because of their disempowerment. Second, the process of constructing an existential threat should be analysed in the same way as hate speech. Even though government discourses are criticised by human rights groups, this has not reduced its influence and power. Impunity is created by hate speech; extra-judicial violence is condoned by hate speech. As yet, there is no effective response to this. Finally, it is also important to see the connection between democracy and securitisation. Of the four case studies, the three that use illegal or quasi-judicial measures are democratic states: the Philippines using vigilante extra-judicial executions; Indonesia using religious groups homophobia; and the physical and sexual abuse of children by state security officers in the Philippines. Rather than leading to an improved rule by law and legal protection, it seems that some democracies have led to its decline. It is important to place the victim of securitisation at the forefront of this study. Security is not about how a threat is conceived by a state, nor about the capacity and legitimacy of the security forces, but about the people who suffer the consequences – the abused children; the trafficked women refugees; the killed human rights defenders; and the harassed lesbian, gay and transgender persons.

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## Interviews

- Tricia Clare Oco, Chair of the Juvenile Justice and Welfare Committee, interviewed on 6 April 2017
- Philippines NGO Social Worker, interviewed on 19 April 2017
- Former girl child detainee in the Philippines, interviewed on 19 April 2017
- Father Shay Cullen, PREDA Foundation, interviewed on 5 April 2017
- Victoria Diaz, Convenor of the Juvenile Justice Network-Philippines (JJNP), interviewed on 25 April 2017