

## **Investigation Report No. 236-237/2559**

**Subject: Unjust practice against a person on the basis of sex in case of claims that students whose gender identity or sexual orientation is not the same as sex at birth were forced to wear their hair and dress according to their sex at birth to attend class, take examination, have apprenticeship and receive degree certificate from a member of the royal family.**

**Complainants submitted their complaints, Complaint No.335/2559 dated 26<sup>th</sup> May 2016 and Complaint No.373/2559 dated 8<sup>th</sup> June 2016, to the National Human Rights Commission. Because these complaints were of the same issue concerning unjust practice against a person on the basis of sex, they were placed together to be considered as one subject matter. The two complainants appealed to the National Human Rights Commission as follows:**

**Complainant No.1** submitted a complaint claiming that she was a person whose gender identity or sexual orientation was not the same as sex at birth and her sexual orientation in daily life had always been that of a woman. She was a student of the accused no.1 and had always dressed according to the accused no.1's female student uniform regulations. On 7<sup>th</sup> April 2016, the complainant no.1 submitted a letter to the accused no.1 requesting permission to wear a female graduate's dress to receive a degree certificate from a member of the royal family for the tuition year 2015 which was scheduled to be in August 2016. Attached with the letter was a medical certificate showing results of examination that the complainant no.1 had been living happily as a full woman for at least four years. She had been using female sex hormone for 11 years and was diagnosed to have transsexualism. While being interviewed, she was not found to have any serious psychiatric symptoms, such as auditory hallucination or paranoia. She also submitted a behavioural certificate of which her professor certified that complainant no.1 had good behaviours in terms of behaviours, morality, ethics and education for consideration. Later on 4<sup>th</sup> May 2016, complainant no.1 was informed by an officer responsible for the degree certificate handing ceremony that the accused no.1 could not do as the complainant no.1 had requested, claiming that Bureau of the Royal Household did not give a permission to do so and the Vice President for Student Affairs ordered that a 2014 regulation forbidding male student to wear a female graduate's dress to receive a degree certificate from a member of the royal family be implemented.

The accused no.1 also had to wait for results of the Meeting of Rajabhat University Rectors about this matter. From the case described above, the complainant no.1 therefore petitioned for assistance that the principle of equality provided by the Constitution of the Kingdom of Thailand and the Gender Equality Act B.E.2558 (2015) should be respected. The complainant no.1 had no intention whatsoever to make the accused no.1 dishonoured; she just wanted to protect a right that she should have been given.

**Complainant no.2** submitted a complaint claiming that she was a person whose gender identity or sexual orientation is not the same as sex at birth and her sexual orientation in daily life had always been that of a woman. She was a student of the accused no.2 and had been forbidden by some lecturers of the accused no.2 to dress according to her sexual orientation to attend class, take examination and have apprenticeship in the subjects they taught. In addition, the accused no.2 had made an announcement concerning dress code of students who wished to receive a degree certificate from a member of the royal family that male graduates must only wear their hair and dress according to their sex at birth. From the case described above, complainant no.2 saw that actions by the accused no.2 were unjust practice against a person on the basis of sex and were against the Gender Equality Act B.E. 2558 (2015) and therefore petitioned it to be investigated.

The National Human Rights Commission had taken into consideration the complaints, facts from the complainants, the accused and representatives of related agencies, and also opinions from its Sub-Committee on Rights of the Elderly, Persons with Disability, Gender-Diverse Persons, and Public Health, and saw that Section 30 of the Constitution of the Kingdom of Thailand B.E. 2550 (2007) and the International Covenant on Civil and Political Rights had laid down a principle which gave recognition and protection that all persons are equal under the law and are equally protected by law without unjust discrimination against a person on the basis of any differences in terms of nationality, skin colour, sex, language, religion, political or any other views, race, property, origin or any other status. Uses of state power, whether to enact, implement or interpret any law must take into consideration human dignity and rights and liberties of the people. The restriction of such rights and liberties as recognised by the Constitution shall not be imposed on a person except by virtue of provisions of the law specifically enacted for the purpose determined by this

Constitution and to the extent of necessity and provided that it shall not affect the essential substances of such rights and liberties. Such restriction must also be recognized by Section 4 of the (interim) Constitution of the Kingdom of Thailand B.E. 2557 (2014). The Gender Equality Act B.E.2558 (2015) also provided measures to protect those unjustly discriminated on the basis of sex and to prevent unjust discrimination on the basis of sex in accordance with the international human right principle. The above-mentioned complaint therefore has problems to be considered as follows:

**Issue no.1: Dress code for attending class, taking examination and having apprenticeship.** It is seen that not giving students a permission to dress according to their sexual orientation which is not the same as their sex at birth would result in complainant no.2 and other students who have not the same gender identity or sexual orientation as their sex at birth feel that they are disdained and their human dignity is undermined, causing restriction to this group of students' right to education. Each higher education institute has rules, regulations or statute concerning dressing of students only for male and female students. An objective of these rules, regulations and statute is to ensure that learning, examination and apprenticeship take place in order. Therefore when a student dresses according to his/her sexual orientation in a way that is orderly and correct according to the university's rules, regulations and statute, whether or not the way he/she dresses is corresponding to their sex at birth, his/her act does not affect other students who attend class and take exam, and does not in any way affect guidelines for testing students' knowledge, as already viewed by the second group of National Human Rights Commission according to a report of consideration no. 386/2557 dated 27<sup>th</sup> October 2014. The accused no.2, however, had already deferred its regulations permitting students to dress according to their sexual orientation which is not the same as their sex at birth to attend class and take examination, but they have to dress orderly and correctly according to the statute concerning the university's dress code. The accused no.2 is in the process of amending related declarations or statute. It, however, still requires students to dress according to their sex at birth for apprenticeship, reasoning that it involves other institutions that provide apprenticeship. The accused then should be made to understand and make adjustments to the whole system in the same direction if it is to change to permit students to dress according to their sexual orientation. This issue thus should be put to rest.

**Issue no.2: Dressing for students to receive a degree certificate from a member of the royal family.** It is seen that in the past, higher education institutes had different guidelines for dressing of graduates in the ceremony to receive a degree certificate from a member of the royal family. Some higher education institutes, such as the accused no.1 and the accused no.2, required all graduates to wear only a graduate's dress according to their sex at birth according to the two accused's related rules, regulations and statute, and resolutions of the meeting of the committee overseeing rehearsal of the degree certificate handing ceremony for the year 2016 and resolution of the Meeting of Rajabhat University Rectors which provides guidelines for students from all 39 Rajabhat universities to dress correctly according to their sex at birth and rank in order to rightly honour the royal ceremony. Moreover, there are limitations in the way that names and titles of graduates who would receive a degree certificate are to be called out. Graduates thus could not be permitted to wear graduate's dress according to their sexual orientation because their dress may not correspond to their name title being called. This would be inappropriate and is contradictory to the two accused's customary practice and dress code which had been in use continuously for many years. Some higher education institutes, such as Ramkhamhaeng University, Thammasat University, Mahidol University and King Mongkut University of Technology Thonburi, on the other hand, permit their graduates to wear graduate's dress according to their sexual orientation.

Later the Gender Equality Act B.E.2558 (2015) was proclaimed as a specific law according to the Constitution of the Kingdom of Thailand, which is the Master Law, in order to come up with measures to protect people unjustly discriminated on the basis of sex in accordance to the universal human right principle. The law became effective on 9<sup>th</sup> September 2015. Now many higher education institutes have already changed their guidelines, deferring graduates to wear graduate's dress according to their sexual orientation which is not the same as their sex at birth to attend the ceremony to receive a degree certificate from a member of the royal family. This happens at both higher education institutes that name title of each graduate is to be called out, such as Chulalongkorn University, and higher education institutes that name titles of graduates are not called out, such as Thammasat University and Kasetsart University.

When the complaints are taken into consideration where rules, regulations and statute of the accused no.1 and the accused no.2 require all graduates to wear graduate's

dress only according to their sex at birth, it is considered that this action is restriction of an expression of one's sexual orientation when it is different from his/her sex at birth and affects both complainants' right to privacy and right to expression of identity or personhood. This restriction is not imposed for protection of the people's welfare and safety, national security or practice according to any religious principle. Rules, regulations and internal code of practice of the accused no.1 and the accused no.2 are therefore contradictory to the Constitution of the Kingdom of Thailand. It is thus considered that this action taken by the accused no.1 and the accused no.2 is an unjust practice against a person on the basis of sex according to the National Human Rights Commission Act B.E.2542 (1999), Article 3 of the Gender Equality Act B.E.2558 (2015) and Article 2 of the International Covenant on Civil and Political Rights. It is also contradictory to Principle 2, Principle 6 and Principle 19 of the Yogyakarta Principles which are principles on the application of international human rights law in relation to sexual orientation and gender identity. In order to prevent discrimination on the basis of sexual orientation and gender identity and to protect every person from defamation and deprivation of human dignity, and to ensure that any person has the right to express identity or personhood, including through speech, deportment, dress, bodily characteristics, choice of name or any other means, whatever sexual orientation or gender identity that person has according to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, and to prevent any case like this to occur again, it is seen therefore that there should be guidelines for correcting such case of complaints according to Section 28 Paragraph 3 of the National Human Rights Commission Act B.E.2542 (1999) which provides that "In the case the Commission is of the opinion that the said commission or omission of acts does not violate human rights but there is an unjust practice from which the aggrieved person deserves a remedy, the Commission may set forth remedial guidelines and notify a person or agency to appropriately perform within the scope of powers and duties of such person or agency".

### **Guidelines for Correction of Unjust Practice**

The National Human Rights Commission therefore sees that it is appropriate to specify guidelines for correcting such case of complaint according to Section 28

Paragraph 3 of the National Human Rights Commission Act B.E.2542 (1999) and propose to the accused no.1 and the accused no.2, the Meeting of University Rectors, the Meeting of Rajabhat University Rectors, Office of the National Higher Education Commission and Ministry of Social Development and Human Security, and Human rights situation to take actions as follows:

1. The accused no.1 and the accused no.2, the Meeting of University Rectors, the Meeting of Rajabhat University Rectors and Office of the National Higher Education Commission should be required to correct or set policies, rules, regulations, declarations, measures, statute or code of practices concerning dressing of students who have gender identity or sexual orientation not the same as their sex at birth for attending class, taking examination, according to Section 17 of the Gender Equality Act B.E.2558 (2015) and to be consistent with the international human rights principles.

2. Ministry of Social welfare and Human Security through Department of Women and Family Institute in the capacity as Secretariat of the Gender Equality Promotion Committee and Gender-Based Unfair Discrimination Identifying Committee is to cooperate with Office of the Higher Education Committee, Council of University Presidents of Thailand, Council of Rajabhat University Presidents, and every higher education institutes to come up with an action plan to promote understanding and speed up public relations about principles of human rights protection that would lead to equal treatment towards students, lecturers and other personnel in higher education institutes by respecting right to privacy and having no gender-based discrimination according to the Gender Equality Act B.E. 2558 (2015).