

111TH CONGRESS
1ST SESSION

S. 1159

To promote freedom, human rights, and the rule of law in Vietnam.

IN THE SENATE OF THE UNITED STATES

MAY 21, 2009

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To promote freedom, human rights, and the rule of law
in Vietnam.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Vietnam Human Rights Act of 2009”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

Sec. 3. Purpose.

TITLE I—PROHIBITION ON INCREASED NONHUMANITARIAN ASSISTANCE TO VIETNAM

Sec. 101. Bilateral nonhumanitarian assistance.

TITLE II—PROHIBITION ON GENERALIZED SYSTEM OF
PREFERENCES AUTHORITY FOR VIETNAM

Sec. 201. Prohibition on generalized system of preferences.

TITLE III—ASSISTANCE TO SUPPORT FREEDOM, HUMAN RIGHTS,
AND THE RULE OF LAW IN VIETNAM

Sec. 301. Assistance.

TITLE IV—UNITED STATES PUBLIC DIPLOMACY

Sec. 401. Sense of Congress on diplomacy with the Government of Vietnam.

Sec. 402. Radio Free Asia transmissions to Vietnam.

Sec. 403. United States educational and cultural exchange programs with Vietnam.

TITLE V—UNITED STATES REFUGEE POLICY

Sec. 501. Refugee resettlement for nationals of Vietnam.

TITLE VI—ANNUAL REPORT ON PROGRESS TOWARD FREEDOM,
HUMAN RIGHTS, AND THE RULE OF LAW IN VIETNAM

Sec. 601. Annual report.

1 SEC. 2. FINDINGS.

2 The Senate finds the following:

3 (1) The bilateral relationship between the
4 United States and the Socialist Republic of Vietnam
5 has grown exponentially during the past 12 years,
6 with more than \$15,700,000,000 in trade between
7 the United States and Vietnam in 2008.

8 (2) The Government of Vietnam's transition to-
9 ward greater economic freedom and trade has not
10 been matched by comparable improvements in basic
11 human rights for Vietnamese citizens, including free-
12 dom of expression, information, association, assem-
13 bly, and religion.

14 (3) Despite assurances that Vietnam's accession
15 to the World Trade Organization would be met with

1 greater respect for human rights, the Government of
2 Vietnam has continued to strictly regulate some reli-
3 gious practices and to imprison an undetermined
4 number of individuals for their peaceful advocacy of
5 political views or religious beliefs.

6 (4) Since Vietnam's accession to the World
7 Trade Organization on January 11, 2007, the Com-
8 munist Party of Vietnam has moved to suppress per-
9 ceived challenges to its rule by arresting dozens of
10 democracy and human rights activists, independent
11 trade union leaders, underground publishers, jour-
12 nalists, bloggers, members of ethnic minorities, and
13 unsanctioned religious groups.

14 (5) The Government of Vietnam has also failed
15 to improve labor rights, continues to arrest and har-
16 ass labor leaders, and restricts the right to organize
17 independently.

18 (6) According to the 2009 Annual Report of the
19 United States Commission on International Reli-
20 gious Freedom, "Vietnam's overall human rights
21 record remains poor, and has deteriorated since
22 Vietnam joined the WTO in January 2007 . . . Over
23 the past two years, the government has moved deci-
24 sively to repress any perceived challenges to its au-
25 thority, tightening controls on the freedom of expres-

1 sion, association, and assembly. New decrees were
2 issued last year prohibiting peaceful protest in prop-
3 erty disputes and limiting speech on the internet. As
4 many as 40 legal and political reform advocates, free
5 speech activists, human rights defenders, labor
6 unionists, journalists, bloggers, and independent reli-
7 gious leaders and religious freedom advocates have
8 been arrested and others have been placed under
9 home detention or surveillance, threatened, intimi-
10 dated, and harassed.”.

11 (7) The continued expansion of the relationship
12 between the Government of Vietnam and the Gov-
13 ernment of the United States should be matched by
14 significant improvement in human rights for Viet-
15 nameese citizens, particularly those enshrined in the
16 International Covenant on Civil and Political Rights,
17 of which Vietnam is a signatory.

18 **SEC. 3. PURPOSE.**

19 The purpose of this Act is to promote the develop-
20 ment of freedom, human rights, and the rule of law in
21 Vietnam.

1 **TITLE I—PROHIBITION ON IN-**
2 **CREASED NONHUMANI-**
3 **TARIAN ASSISTANCE TO VIET-**
4 **NAM**

5 **SEC. 101. BILATERAL NONHUMANITARIAN ASSISTANCE.**

6 (a) ASSISTANCE.—

7 (1) IN GENERAL.—Except as provided under
8 subsection (b), the Federal Government may not
9 provide the Government of Vietnam with non-
10 humanitarian development, trade, economic, and se-
11 curity assistance during any fiscal year that exceeds
12 the amount of such assistance provided during fiscal
13 year 2009 unless—

14 (A) the Federal Government provides as-
15 sistance, in addition to the assistance author-
16 ized under section 301(c), supporting the cre-
17 ation and facilitation of human rights training,
18 civil society capacity building, noncommercial
19 rule of law programming, and exchange pro-
20 grams between the Vietnamese National Assem-
21 bly and the United States Congress (referred to
22 in this section as “additional human rights pro-
23 gramming”) at levels commensurate with, or ex-
24 ceeding, any increases in nonhumanitarian de-

1 velopment, trade, economic, and security assist-
2 ance programming to Vietnam;

3 (B) with respect to the limitation for fiscal
4 year 2010, the President determines and cer-
5 tifies to Congress, not later than 30 days after
6 the date of the enactment of this Act, that the
7 requirements under subparagraphs (A) through
8 (F) of paragraph (2) have been met during the
9 12-month period ending on the date of the cer-
10 tification; and

11 (C) with respect to the limitation for sub-
12 sequent fiscal years, the President determines
13 and certifies to Congress, in the most recent
14 annual report submitted pursuant to section
15 601, that the requirements under subpara-
16 graphs (A) through (F) of paragraph (2) have
17 been met during the 12-month period covered
18 by the report.

19 (2) REQUIREMENTS.—The requirements of this
20 paragraph are met if—

21 (A) the Government of Vietnam has made
22 substantial progress toward releasing all polit-
23 ical and religious prisoners from imprisonment,
24 house arrest, and other forms of detention;

1 (B) the Government of Vietnam has made
2 substantial progress toward—

3 (i) respecting the right to the freedom
4 of expression, assembly, and association,
5 including the release of independent jour-
6 nalists, bloggers, democracy, and labor ac-
7 tivists;

8 (ii) repealing or revising laws that
9 criminalize peaceful dissent, independent
10 media, unsanctioned religious activity, and
11 nonviolent demonstrations and rallies, in
12 accordance with international standards
13 and treaties to which Vietnam is a party;

14 (iii) respecting the right to the free-
15 dom of religion, including the right to par-
16 ticipate in religious activities and institu-
17 tions without inference, harassment, or in-
18 volvement of the Government, for all of
19 Vietnam's diverse religious communities,
20 including the Unified Buddhist Church of
21 Vietnam, Catholics, Protestants, Hoa Hao
22 Buddhism, CaoDai, Khmer Buddhists, and
23 other religious communities; and

1 (iv) returning estates and properties
2 confiscated from Vietnam's religious com-
3 munities;

4 (C) the Government of Vietnam has made
5 substantial progress toward allowing Viet-
6 nameese nationals free and open access to
7 United States refugee programs;

8 (D) the Government of Vietnam has made
9 substantial progress toward granting its citizens
10 the right to travel outside Vietnam without sig-
11 nificant restriction;

12 (E) the Government of Vietnam has made
13 substantial progress toward protecting the
14 human rights, language, culture, land rights,
15 and religion of all ethnic and minority groups;
16 and

17 (F)(i) no official of the Government of
18 Vietnam and no agency or entity wholly or
19 partly owned by the Government of Vietnam
20 was complicit in a severe form of trafficking in
21 persons; or

22 (ii) the Government of Vietnam took all
23 appropriate steps to end any such complicity
24 and hold any official, agency, or entity respon-

1 sible for such complicity fully accountable for
2 such conduct.

3 (b) EXCEPTION.—

4 (1) CONTINUATION OF ASSISTANCE IN THE NA-
5 TIONAL INTEREST.—If the Government of Vietnam
6 fails to meet the requirements under subsection
7 (a)(2), the President may waive the application of
8 subsection (a) for any fiscal year if the President de-
9 termines that increased nonhumanitarian assistance
10 to the Government of Vietnam—

11 (A) would promote the purposes of this
12 Act; or

13 (B) is otherwise in the national interest of
14 the United States.

15 (2) EXERCISE OF WAIVER AUTHORITY.—The
16 President may exercise the authority under para-
17 graph (1) with respect to—

18 (A) all United States nonhumanitarian as-
19 sistance to Vietnam; or

20 (B) 1 or more programs, projects, or ac-
21 tivities of such assistance.

22 (c) DEFINITIONS.—In this section:

23 (1) SEVERE FORMS OF TRAFFICKING IN PER-
24 SONS.—The term “severe forms of trafficking in
25 persons” has the meaning given the term in section

1 103(8) of the Trafficking Victims Protection Act of
2 2000 (Public Law 106–386 (114 Stat. 1470); 22
3 U.S.C. 7102(8)).

4 (2) UNITED STATES NONHUMANITARIAN AS-
5 SISTANCE.—The term “United States nonhumani-
6 tarian assistance” means—

7 (A) any assistance authorized under the
8 Foreign Assistance Act of 1961 (22 U.S.C.
9 2151 et seq.), including programs under title IV
10 of chapter 2 of part I of such Act relating to
11 the Overseas Private Investment Corporation,
12 except for—

13 (i) disaster relief assistance, including
14 any assistance under chapter 9 of part I of
15 such Act;

16 (ii) assistance which involves the pro-
17 vision of food (including monetization of
18 food), health care, medicine, or social serv-
19 ices and disability relief programs;

20 (iii) assistance for refugees;

21 (iv) assistance to combat HIV/AIDS,
22 including any assistance under section
23 104A of such Act; and

24 (v) assistance to address the environ-
25 mental consequences of dioxin; and

1 (B) sales, or financing on any terms, au-
2 thorized under the Arms Export Control Act
3 (22 U.S.C. 2751 et seq.).

4 **TITLE II—PROHIBITION ON GEN-**
5 **ERALIZED SYSTEM OF PREF-**
6 **ERENCES AUTHORITY FOR**
7 **VIETNAM**

8 **SEC. 201. PROHIBITION ON GENERALIZED SYSTEM OF**
9 **PREFERENCES.**

10 The President may not provide duty-free treatment
11 for eligible articles from Vietnam under title V of the
12 Trade Act of 1974 (19 U.S.C. 2461 et seq.) until the
13 President determines and certifies to Congress that the
14 Government of Vietnam—

15 (1) fully protects the freedom of association, in-
16 cluding the right to form and join labor unions and
17 collectively bargain with employers, in law and in
18 practice;

19 (2) protects from harm and does not itself en-
20 gage in or condone serious violations of the rights of
21 workers, including the detention, harassment, or ar-
22 rest of labor activists or individuals who write,
23 speak, or otherwise disseminate information relating
24 to labor rights;

1 (3) fully protects in law and in practice inter-
2 nationally recognized workers' rights, including pro-
3 hibitions on forced labor and a minimum age for the
4 employment of children; and

5 (4) has released all persons detained for peace-
6 ful activities to promote the rights of workers to
7 freely express concerns and to freely assemble and
8 associate, including the right to form and join trade
9 unions of their own choice.

10 **TITLE III—ASSISTANCE TO SUP-**
11 **PORT FREEDOM, HUMAN**
12 **RIGHTS, AND THE RULE OF**
13 **LAW IN VIETNAM**

14 **SEC. 301. ASSISTANCE.**

15 (a) **IN GENERAL.**—The President is authorized to
16 provide assistance, through appropriate nongovernmental
17 organizations and the Human Rights Defenders Fund, for
18 the support of individuals and organizations to promote
19 internationally recognized human rights in Vietnam.

20 (b) **LIMITATION.**—Financial assistance authorized
21 under this section may only be provided to an individual,
22 organization, or entity that officially opposes the use of
23 violence and terrorism.

24 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
25 are authorized to be appropriated to the President—

1 (1) \$2,000,000 for each of the fiscal years 2010
2 and 2011; and

3 (2) any additional amounts that may be needed
4 to carry out the provisions described in section
5 101(a)(1)(A).

6 **TITLE IV—UNITED STATES**
7 **PUBLIC DIPLOMACY**

8 **SEC. 401. SENSE OF CONGRESS ON DIPLOMACY WITH THE**
9 **GOVERNMENT OF VIETNAM.**

10 (a) IN GENERAL.—It is the sense of Congress that
11 in diplomatic discussions with the Government of Viet-
12 nam, including at the United States-Vietnam Human
13 Rights Dialogue and other strategic dialogues in which of-
14 ficials of the Department of State participates or initiates
15 with representatives of the Government of Vietnam, that
16 such officials shall seek substantial progress by the Gov-
17 ernment of Vietnam toward—

18 (1) releasing all those detained or restricted by
19 the Government of Vietnam because of the expres-
20 sion of their views or the practice of their faith;

21 (2) fully respecting the right to freedom of reli-
22 gion and the right of all religious groups and adher-
23 ents, including those choosing not to join or affiliate
24 with government-organized oversight committees,
25 to—

1 (A) legally operate without government re-
2 strictions; and

3 (B) participate in religious activities and
4 institutions without interference by, or the in-
5 volvement of, the Government of Vietnam;

6 (3) returning all estates and properties con-
7 fiscated by the Government of Vietnam from church-
8 es and religious institutions in Vietnam;

9 (4) allowing Vietnamese nationals free and open
10 access to United States refugee programs;

11 (5) respecting the human rights of members of
12 all ethnic minority groups, including—

13 (A) language instruction;

14 (B) cultural preservation;

15 (C) religious freedom;

16 (D) land rights; and

17 (E) the freedom of assembly;

18 (6) respecting the freedom of association, in-
19 cluding—

20 (A) protecting the rights of independent
21 labor activists;

22 (B) removing prohibitions on workers
23 forming or joining independent labor unions;
24 and

1 (C) not engaging in or condoning serious
2 violations of the rights of workers;

3 (7) respecting the freedom of expression, in-
4 cluding—

5 (A) repealing or revising laws, decrees, and
6 ordinances that limit such freedom;

7 (B) authorizing the publication of inde-
8 pendent, privately-run newspapers and maga-
9 zines;

10 (C) removing filtering, surveillance, and
11 other restrictions on Internet usage; and

12 (D) respecting the right to peaceful dis-
13 semination of opinions and views over the Inter-
14 net;

15 (8) revising laws, ordinances, and decrees that
16 contradict the standards of the International Cov-
17 enant on Civil and Political Rights, including—

18 (A) protections for the freedom of expres-
19 sion, freedom of assembly, freedom of associa-
20 tion, and the freedom of religion; and

21 (B) the right to legal representation and a
22 fair trial;

23 (9) repealing provisions in Vietnamese law that
24 criminalize peaceful dissent, independent media,

1 unsanctioned religious activity, and non-violent dem-
2 onstrations and rallies, including—

3 (A) vague national security provisions in
4 Vietnam’s Criminal Code, such as article 80
5 (spying), article 87 (undermining the unity pol-
6 icy), article 88 (anti-government propaganda),
7 article 89 (disrupting security), article 245
8 (causing public disorder), and article 258
9 (abusing democratic rights to infringe upon na-
10 tional interests); and

11 (B) Ordinance 44, which authorizes the in-
12 voluntary commitment of persons deemed to
13 have violated national security laws to social
14 protection centers, rehabilitation camps, or
15 mental institutions without judicial process; and

16 (10) ensuring that the Government of Viet-
17 nam—

18 (A) hold government officials, agencies,
19 and entities that violate the human rights of
20 persons in Vietnam accountable under the law;
21 and

22 (B) provide appropriate measures to inves-
23 tigate, discipline, and punish such officials,
24 agencies, and entities.

1 (b) CONSULTATION REQUIRED.—The Secretary of
2 State shall develop strategies for reaching the objectives
3 described in subsection (a) through consultation with—

4 (1) Vietnamese-American groups;

5 (2) representatives from the Khmer,
6 Montagnard, and Hmong communities;

7 (3) human rights organizations, including inter-
8 national human rights organizations; and

9 (4) the United States Commission on Inter-
10 national Religious Freedom.

11 **SEC. 402. RADIO FREE ASIA TRANSMISSIONS TO VIETNAM.**

12 (a) POLICY OF THE UNITED STATES.—It is the pol-
13 icy of the United States to take such measures as may
14 be necessary to overcome the jamming of Radio Free Asia
15 by the Government of Vietnam.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
17 tion to such amounts as are otherwise authorized to be
18 appropriated for the Broadcasting Board of Governors,
19 there are authorized to be appropriated to carry out the
20 policy described in subsection (a)—

21 (1) \$12,500,000 for fiscal year 2010; and

22 (2) \$2,500,000 for fiscal year 2011.

1 **SEC. 403. UNITED STATES EDUCATIONAL AND CULTURAL**
2 **EXCHANGE PROGRAMS WITH VIETNAM.**

3 It is the policy of the United States that programs
4 of educational and cultural exchange with Vietnam should
5 actively promote progress toward freedom in Vietnam
6 by—

7 (1) providing opportunities to Vietnamese na-
8 tionals from a wide range of occupations and per-
9 spectives to see freedom, human rights, and the rule
10 of law in action; and

11 (2) ensuring that Vietnamese nationals who
12 have already demonstrated a commitment to such
13 values are included in such programs.

14 **TITLE V—UNITED STATES**
15 **REFUGEE POLICY**

16 **SEC. 501. REFUGEE RESETTLEMENT FOR NATIONALS OF**
17 **VIETNAM.**

18 (a) **POLICY OF THE UNITED STATES.**—It is the pol-
19 icy of the United States to offer refugee resettlement to
20 nationals of Vietnam (including members of the
21 Montagnard ethnic minority groups) who were eligible for
22 the Humanitarian Resettlement Program, the Orderly De-
23 parture Program, Resettlement Opportunities for Viet-
24 namese Returnees Program, the Amerasian Homecoming
25 Act of 1988, or any other United States refugee program
26 and who were deemed ineligible due to administrative

1 error or who for reasons beyond the control of such indi-
2 viduals (including insufficient or contradictory information
3 or the inability to pay bribes demanded by officials of the
4 Government of Vietnam) were unable or failed to apply
5 for such programs in compliance with deadlines imposed
6 by the Department of State.

7 (b) AUTHORIZED ACTIVITIES.—Of the amounts au-
8 thorized to be appropriated to the Department of State
9 for Migration and Refugee Assistance for each of the fiscal
10 years 2010, 2011, and 2012, such sums as may be nec-
11 essary shall be made available for the protection (including
12 resettlement, as appropriate) of Vietnamese refugees and
13 asylum seekers, including Montagnards in Cambodia.

14 **TITLE VI—ANNUAL REPORT ON**
15 **PROGRESS TOWARD FREE-**
16 **DOM, HUMAN RIGHTS, AND**
17 **THE RULE OF LAW IN VIET-**
18 **NAM**

19 **SEC. 601. ANNUAL REPORT.**

20 (a) IN GENERAL.—Not later than 6 months after the
21 date of the enactment of this Act, and every 12 months
22 thereafter, the Secretary of State shall submit a report
23 to Congress that contains—

1 (1) a description of the programs established to
2 meet the additional human rights programming re-
3 quirements described in section 101(a)(1);

4 (2)(A) the determination and certification of
5 the President that the requirements of subpara-
6 graphs (A) through (E) of section 101(a)(2) have
7 been met, if applicable; and

8 (B) the determination of the President under
9 section 101(b)(1), if applicable;

10 (3) the steps taken to achieve the objectives de-
11 scribed in section 401(a);

12 (4) a description of the efforts by the United
13 States Government to secure transmission sites for
14 Radio Free Asia in countries in close geographical
15 proximity to Vietnam, in accordance with section
16 402(a);

17 (5) a description of the efforts to ensure that
18 programs with Vietnam promote the policy described
19 in section 403 of this Act and in section 105 of the
20 Human Rights, Refugee, and Other Foreign Policy
21 Provisions Act of 1996, regarding participation in
22 programs of educational and cultural exchange;

23 (6) the steps taken to carry out the policy de-
24 scribed in section 501(a);

1 (7) lists of persons believed to be imprisoned,
2 detained, placed under house arrest, tortured, or
3 otherwise persecuted by the Government of Vietnam
4 due to their pursuit of internationally recognized
5 human rights, which is compiled by the Secretary
6 with appropriate discretion, including concerns re-
7 garding the safety and security of, and benefit to,
8 the persons who may be included on the lists and
9 their families;

10 (8) a list of the persons and their families de-
11 scribed in paragraph (7) who may qualify for protec-
12 tions under United States refugee programs; and

13 (9) a description of the development of the rule
14 of law in Vietnam, including—

15 (A) progress made toward the development
16 of institutions of democratic governance in Viet-
17 nam;

18 (B) the processes by which statutes, regu-
19 lations, rules, and other legal acts of the Gov-
20 ernment of Vietnam are developed and become
21 binding within Vietnam;

22 (C) the extent to which statutes, regula-
23 tions, rules, administrative and judicial deci-
24 sions, and other legal acts of the Government of

1 Vietnam are published and are made accessible
2 to the public;

3 (D) the extent to which administrative and
4 judicial decisions are supported by statements
5 of reasons based upon written statutes, regula-
6 tions, rules, and other legal acts of the Govern-
7 ment of Vietnam;

8 (E) the extent to which individuals are
9 treated equally under the laws of Vietnam with-
10 out regard to citizenship, race, religion, political
11 opinion, or current or former associations;

12 (F) the extent to which administrative and
13 judicial decisions are independent of political
14 pressure or governmental interference and are
15 reviewed by entities of appellate jurisdiction;
16 and

17 (G) the extent to which laws in Vietnam
18 are written and administered in ways that are
19 consistent with international human rights
20 standards, including the requirements of the
21 International Covenant on Civil and Political
22 Rights.

23 (b) CONTACTS WITH OTHER ORGANIZATIONS.—In
24 preparing the report under subsection (a), the Secretary
25 shall—

1 (1) seek out and maintain contacts with non-
2 governmental organizations and human rights advo-
3 cates (including Vietnamese-Americans and human
4 rights advocates in Vietnam), as appropriate;

5 (2) receive reports and updates from such orga-
6 nizations and evaluate such reports; and

7 (3) seek to consult with the United States Com-
8 mission on International Religious Freedom for ap-
9 propriate sections of the report.

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