

111TH CONGRESS
1ST SESSION

H. R. 1969

To promote freedom and democracy in Vietnam.

IN THE HOUSE OF REPRESENTATIVES

APRIL 2, 2009

Mr. SMITH of New Jersey (for himself, Mr. WOLF, Ms. ZOE LOFGREN of California, Mr. CAO, Ms. LORETTA SANCHEZ of California, Mr. ROYCE, Mr. ROHRABACHER, and Mr. PENCE) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote freedom and democracy 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 THE GOVERNMENT OF 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 DEMOCRACY IN VIETNAM

Sec. 301. Assistance.

TITLE IV—UNITED STATES PUBLIC DIPLOMACY

Sec. 401. Radio Free Asia transmissions to Vietnam.

Sec. 402. 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 AND DEMOCRACY IN VIETNAM

Sec. 601. Annual report.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The relationship between the United States
4 and the Socialist Republic of Vietnam has grown
5 substantially since the end of the trade embargo in
6 1994, with annual trade between the 2 countries
7 reaching over \$15,200,000,000 in 2008.

8 (2) The Government of Vietnam's transition to-
9 ward greater economic freedom and trade has not
10 been matched by greater political freedom and sub-
11 stantial improvements in basic human rights for Vi-
12 etnamese citizens, including freedom of religion, ex-
13 pression, association, and assembly.

1 (3) The United States Congress agreed to Viet-
2 nam becoming an official member of the World
3 Trade Organization in 2006, amidst assurances that
4 the Government of Vietnam was steadily improving
5 its human rights record and would continue to do so.

6 (4) Vietnam remains a one-party state, ruled
7 and controlled by the Communist Party of Vietnam
8 (CPV), which continues to deny the right of citizens
9 to change their government.

10 (5) Although in recent years the National As-
11 sembly of Vietnam has played an increasingly active
12 role as a forum for highlighting local concerns, cor-
13 ruption, and inefficiency, the National Assembly re-
14 mains subject to the direction of the CPV and the
15 CPV maintains control over the selection of can-
16 didates in national and local elections.

17 (6) The Government of Vietnam forbids public
18 challenge to the legitimacy of the one-party state, re-
19 stricts freedoms of opinion, the press, and associa-
20 tion and tightly limits access to the Internet and
21 telecommunication.

22 (7) Since Vietnam's accession to the WTO on
23 January 11, 2007, the Government of Vietnam arbi-
24 trarily arrested and imprisoned several individuals
25 for their peaceful advocacy of democracy, including

1 Father Nguyen Van Ly and human rights lawyers
2 Nguyen Van Dai and Le Thi Cong Nhan.

3 (8) The Government of Vietnam continues to
4 detain, imprison, place under house arrest, convict,
5 or otherwise restrict persons for the peaceful expres-
6 sion of dissenting political or religious views.

7 (9) The Government of Vietnam has also failed
8 to improve labor rights, continues to arrest and har-
9 ass labor leaders, and restricts the right to organize
10 independently.

11 (10) The Government of Vietnam continues to
12 limit freedom of religion and restrict the operation
13 of religious organizations.

14 (11) Despite reported progress in church open-
15 ings and legal registrations of religious venues, the
16 Government of Vietnam has halted most positive ac-
17 tions since the Department of State lifted the “coun-
18 try of particular concern” (CPC) designation for
19 Vietnam in November 2006.

20 (12) Unregistered ethnic minority Protestant
21 congregations suffer severe abuses because of actions
22 by the Government of Vietnam, which have included
23 forced renunciations of faith, arrest and harassment,
24 the withholding of social programs provided for the

1 general population, confiscation and destruction of
2 property, and subjection to severe beatings.

3 (13) During a peaceful Catholic prayer vigil for
4 the return of government confiscated church prop-
5 erties, protestors were dispersed after being har-
6 assed, some were detained, and some of the property
7 was destroyed. Catholics continue to face some re-
8 strictions on selection of clergy, the establishment of
9 seminaries and seminary candidates, and restrictions
10 on individual cases of travel and church registration.

11 (14) The Unified Buddhist Church of Vietnam
12 (UBCV) suffers persecutions as the Government of
13 Vietnam continues to restrict contacts and move-
14 ment of senior UBCV clergy for refusing to join the
15 state sponsored Buddhist organizations, the Govern-
16 ment restricts expression and assembly, and the
17 Government continues to harass and threaten UBCV
18 monks, nuns, and youth leaders.

19 (15) The Government of Vietnam continues to
20 suppress the activities of other religious adherents,
21 including Cao Dai and Hoa Hao who lack official
22 recognition or have chosen not to affiliate with the
23 state-sanctioned groups, including through the use
24 of detention and imprisonment.

1 (16) During Easter weekend in April 2004,
2 thousands of Montagnards gathered to protest their
3 treatment by the Government of Vietnam, including
4 the confiscation of tribal lands and ongoing restric-
5 tions on religious activities. Credible reports indicate
6 that the protests were met with violent response as
7 many demonstrators were arrested, injured, went
8 into hiding, and that others were killed. Many of
9 these Montagnards are still serving long sentences
10 for their involvement in peaceful demonstrations in
11 2001 and 2004. Government officials continue to se-
12 verely restrict Montagnard movement and prohibit
13 them from seeking asylum in Cambodia.

14 (17) Ethnic minority Hmong in the Northwest
15 Highlands of Vietnam also suffer restrictions,
16 abuses, and persecution by the Government of Viet-
17 nam, and although the Government is now allowing
18 some Hmong Protestants to organize and conduct
19 religious activity, some government officials continue
20 to deny or ignore additional applications for reg-
21 istration.

22 (18) On February 8, 2007, the Government of
23 Vietnam arrested and defrocked several ethnic
24 Khmer Buddhists in response to a peaceful religious
25 protest. The Government continues to restrict

1 Khmer Krom expression, assembly, association, and
2 controls all religious organizations and prohibits
3 most peaceful protests.

4 (19) The Government of Vietnam controls all
5 print and electronic media, including access to the
6 Internet, jams the signals of some foreign radio sta-
7 tions, including Radio Free Asia, and has detained
8 and imprisoned individuals who have posted, pub-
9 lished, sent, or otherwise distributed democracy-re-
10 lated materials.

11 (20) People arrested in Vietnam because of
12 their political or religious affiliations and activities
13 often are not accorded due legal process as they lack
14 full access to lawyers of their choice, may experience
15 closed trials, have often been detained for years
16 without trial, and have been subjected to the use of
17 torture to admit crimes they did not commit or to
18 falsely denounce their own leaders.

19 (21) Vietnam continues to be a source country
20 for the commercial sexual exploitation and forced
21 labor of women and girls, for men and women legally
22 entering into international labor contracts who sub-
23 sequently face conditions of debt bondage or forced
24 labor, and is a destination country for child traf-

1 ficking and continues to have internal human traf-
2 ficking.

3 (22) Although the Government of Vietnam is
4 making progress in combating human trafficking, it
5 does not fully comply with the minimum standards
6 for the elimination of trafficking.

7 (23) United States refugee resettlement pro-
8 grams, including the Humanitarian Resettlement
9 (HR) Program, the Orderly Departure Program
10 (ODP), Resettlement Opportunities for Vietnamese
11 Returnees (ROVR) Program, general resettlement of
12 boat people from refugee camps throughout South-
13 east Asia, the Amerasian Homecoming Act of 1988,
14 and the Priority One Refugee resettlement category
15 have helped rescue Vietnamese nationals who have
16 suffered persecution on account of their associations
17 with the United States as well as Vietnamese nation-
18 als who have been persecuted because of race, reli-
19 gion, nationality, political opinion, or membership in
20 a particular social group.

21 (24) While previous programs have served their
22 purposes well, a significant number of eligible refu-
23 gees from Vietnam were unfairly denied or excluded,
24 including Amerasians, in some cases by vindictive or
25 corrupt Vietnamese officials who controlled access to

1 the programs, and in others by United States per-
2 sonnel who imposed unduly restrictive interpreta-
3 tions of program criteria. In addition, the Govern-
4 ment of Vietnam has denied passports to persons
5 who the United States has found eligible for refugee
6 admission.

7 (25) Congress has passed numerous resolutions
8 condemning human rights abuses in Vietnam, indi-
9 cating that although there has been an expansion of
10 relations with the Government of Vietnam, it should
11 not be construed as approval of the ongoing and se-
12 rious violations of fundamental human rights in
13 Vietnam.

14 (26) Enhancement of relations between the
15 United States and Vietnam has proved an oppor-
16 tunity for a human rights dialogue and could lead to
17 future progress on human rights issues in Vietnam.

18 **SEC. 3. PURPOSE.**

19 The purpose of this Act is to promote the develop-
20 ment of freedom and democracy in Vietnam.

1 **TITLE I—PROHIBITION ON IN-**
2 **CREASED NONHUMANI-**
3 **TARIAN ASSISTANCE TO THE**
4 **GOVERNMENT OF VIETNAM**

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

6 (a) ASSISTANCE.—

7 (1) IN GENERAL.—Except as provided in sub-
8 section (b), the Federal Government may not pro-
9 vide nonhumanitarian assistance to the Government
10 of Vietnam during any fiscal year in an amount that
11 exceeds the amount of such assistance provided dur-
12 ing fiscal year 2009 unless—

13 (A) the Federal Government provides as-
14 sistance, in addition to the assistance author-
15 ized under section 301(b), supporting the cre-
16 ation and facilitation of human rights training,
17 civil society capacity building, noncommercial
18 rule of law programming, and exchange pro-
19 grams between the Vietnamese National Assem-
20 bly and the United States Congress at levels
21 commensurate with, or exceeding, any increases
22 in nonhumanitarian assistance to Vietnam;

23 (B) with respect to the limitation for fiscal
24 year 2010, the President determines and cer-
25 tifies to Congress, not later than 30 days after

1 the date of the enactment of this Act, that the
2 requirements of subparagraphs (A) through (G)
3 of paragraph (2) have been met during the 12-
4 month period ending on the date of the certifi-
5 cation; and

6 (C) with respect to the limitation for sub-
7 sequent fiscal years, the President determines
8 and certifies to Congress, in the most recent
9 annual report submitted pursuant to section
10 601, that the requirements of subparagraphs
11 (A) through (G) of paragraph (2) have been
12 met during the 12-month period covered by the
13 report.

14 (2) REQUIREMENTS.—The requirements of this
15 paragraph are the following:

16 (A) The Government of Vietnam has made
17 substantial progress toward releasing all polit-
18 ical and religious prisoners from imprisonment,
19 house arrest, and other forms of detention.

20 (B) The Government of Vietnam has made
21 substantial progress toward—

22 (i) respecting the right to freedom of
23 religion, including the right to participate
24 in religious activities and institutions with-
25 out interference, harassment, or involve-

1 ment of the Government, for all of Viet-
2 nam's diverse religious communities; and

3 (ii) returning estates and properties
4 confiscated from the churches and religious
5 communities.

6 (C) The Government of Vietnam has made
7 substantial progress toward respecting the right
8 to freedom of expression, assembly, and associa-
9 tion, including the release of independent jour-
10 nalists, bloggers, and democracy and labor ac-
11 tivists.

12 (D) The Government of Vietnam has made
13 substantial progress toward repealing or revis-
14 ing laws that criminalize peaceful dissent, inde-
15 pendent media, unsanctioned religious activity,
16 and nonviolent demonstrations and rallies, in
17 accordance with international standards and
18 treaties to which Vietnam is a party.

19 (E) The Government of Vietnam has made
20 substantial progress toward allowing Viet-
21 namese nationals free and open access to
22 United States refugee programs.

23 (F) The Government of Vietnam has made
24 substantial progress toward respecting the

1 human rights of members of all ethnic and mi-
2 nority groups.

3 (G) Neither any official of the Government
4 of Vietnam nor any agency or entity wholly or
5 partly owned by the Government of Vietnam
6 was complicit in a severe form of trafficking in
7 persons, or the Government of Vietnam took all
8 appropriate steps to end any such complicity
9 and hold such official, agency, or entity fully
10 accountable for its conduct.

11 (b) EXCEPTION.—

12 (1) CONTINUATION OF ASSISTANCE IN THE NA-
13 TIONAL INTEREST.—Notwithstanding the failure of
14 the Government of Vietnam to meet the require-
15 ments of subsection (a)(2), the President may waive
16 the application of subsection (a) for any fiscal year
17 if the President determines that the provision to the
18 Government of Vietnam of increased nonhumanitarian
19 assistance would promote the purpose of this
20 Act or is otherwise in the national interest of the
21 United States.

22 (2) EXERCISE OF WAIVER AUTHORITY.—The
23 President may exercise the authority under para-
24 graph (1) with respect to—

1 (A) all United States nonhumanitarian as-
2 sistance to Vietnam; or

3 (B) one or more programs, projects, or ac-
4 tivities of such assistance.

5 (c) DEFINITIONS.—In this section:

6 (1) NONHUMANITARIAN ASSISTANCE.—The
7 term “nonhumanitarian assistance” means—

8 (A) any assistance under the Foreign As-
9 sistance Act of 1961 (including programs under
10 title IV of chapter 2 of part I of that Act, relat-
11 ing to the Overseas Private Investment Cor-
12 poration), other than—

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

16 (ii) assistance which involves the pro-
17 vision of food (including monetization of
18 food) or medicine;

19 (iii) assistance for refugees; and

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

23 (B) sales, or financing on any terms, under
24 the Arms Export Control Act.

1 rest of labor activists or individuals who write,
2 speak, or otherwise disseminate information relating
3 to labor rights.

4 **TITLE III—ASSISTANCE TO SUP-**
5 **PORT DEMOCRACY IN VIET-**
6 **NAM**

7 **SEC. 301. ASSISTANCE.**

8 (a) IN GENERAL.—The President is authorized to
9 provide assistance, through appropriate nongovernmental
10 organizations and the Human Rights Defenders Fund, for
11 the support of individuals and organizations to promote
12 internationally recognized human rights in Vietnam.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
14 are authorized to be appropriated to the President to carry
15 out subsection (a) \$2,000,000 for each of the fiscal years
16 2010 and 2011.

17 **TITLE IV—UNITED STATES**
18 **PUBLIC DIPLOMACY**

19 **SEC. 401. RADIO FREE ASIA TRANSMISSIONS TO VIETNAM.**

20 (a) POLICY OF THE UNITED STATES.—It is the pol-
21 icy of the United States to take such measures as are nec-
22 essary to overcome the jamming of Radio Free Asia by
23 the Government of Vietnam.

24 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
25 tion to such amounts as are otherwise authorized to be

1 appropriated for the Broadcasting Board of Governors,
 2 there are authorized to be appropriated to carry out the
 3 policy under subsection (a) \$12,500,000 for the fiscal
 4 year 2010 and \$2,500,000 for fiscal year 2011.

5 **SEC. 402. UNITED STATES EDUCATIONAL AND CULTURAL**
 6 **EXCHANGE PROGRAMS WITH VIETNAM.**

7 It is the policy of the United States that programs
 8 of educational and cultural exchange with Vietnam should
 9 actively promote progress toward freedom and democracy
 10 in Vietnam by providing opportunities to Vietnamese na-
 11 tionals from a wide range of occupations and perspectives
 12 to see freedom and democracy in action and, also, by en-
 13 suring that Vietnamese nationals who have already dem-
 14 onstrated a commitment to these values are included in
 15 such programs.

16 **TITLE V—UNITED STATES**
 17 **REFUGEE POLICY**

18 **SEC. 501. REFUGEE RESETTLEMENT FOR NATIONALS OF**
 19 **VIETNAM.**

20 (a) POLICY OF THE UNITED STATES.—It is the pol-
 21 icy of the United States to offer refugee resettlement to
 22 nationals of Vietnam (including members of the
 23 Montagnard ethnic minority groups) who were eligible for
 24 the Orderly Departure Program (ODP), the Humanitarian
 25 Resettlement (HR) Program, the Resettlement Op-

1 portunities for Vietnamese Returnees (ROVR) Program,
2 the Amerasian Homecoming Act of 1988, or any other
3 United States refugee program and who were deemed in-
4 eligible due to administrative error or who for reasons be-
5 yond the control of such individuals (including insufficient
6 or contradictory information or the inability to pay bribes
7 demanded by officials of the Government of Vietnam) were
8 unable or failed to apply for such programs in compliance
9 with deadlines imposed by the Department of State.

10 (b) AUTHORIZED ACTIVITY.—Of the amounts au-
11 thorized to be appropriated to the Department of State
12 for Migration and Refugee Assistance for each of the fiscal
13 years 2010, 2011, and 2012, such sums as may be nec-
14 essary are authorized to be made available for the protec-
15 tion (including resettlement in appropriate cases) of Viet-
16 nameese refugees and asylum seekers, including
17 Montagnards and ethnic Khmer in Cambodia and Thai-
18 land.

19 **TITLE VI—ANNUAL REPORT ON**
20 **PROGRESS TOWARD FREE-**
21 **DOM AND DEMOCRACY IN**
22 **VIETNAM**

23 **SEC. 601. ANNUAL REPORT.**

24 (a) IN GENERAL.—Not later than 6 months after the
25 date of the enactment of this Act and every 12 months

1 thereafter, the Secretary of State shall submit to the Con-
2 gress a report on the following:

3 (1) The determination and certification of the
4 President that the requirements of subparagraphs
5 (A) through (G) of section 101(a)(2) have been met,
6 if applicable.

7 (2) Steps taken to carry out section
8 101(a)(1)(A), if applicable.

9 (3) Efforts by the United States Government to
10 secure transmission sites for Radio Free Asia in
11 countries in close geographical proximity to Vietnam
12 in accordance with section 401(a).

13 (4) Efforts to ensure that programs with Viet-
14 nam promote the policy set forth in section 402 and
15 with section 105 of the Human Rights, Refugee, and
16 Other Foreign Policy Provisions Act of 1996 regard-
17 ing participation in programs of educational and cul-
18 tural exchange.

19 (5) Steps taken to carry out the policy under
20 section 501(a).

21 (6) Lists of persons believed to be imprisoned,
22 detained, or placed under house arrest, tortured, or
23 otherwise persecuted by the Government of Vietnam
24 due to their pursuit of internationally recognized
25 human rights. In compiling such lists, the Secretary

1 shall exercise appropriate discretion, including con-
2 cerns regarding the safety and security of, and ben-
3 efit to, the persons who may be included on the lists
4 and their families. In addition, the Secretary shall
5 include a list of such persons and their families who
6 may qualify for protections under United States ref-
7 ugee programs.

8 (7) A description of the development of the rule
9 of law in Vietnam, including—

10 (A) progress toward the development of in-
11 stitutions of democratic governance;

12 (B) processes by which statutes, regula-
13 tions, rules, and other legal acts of the Govern-
14 ment of Vietnam are developed and become
15 binding within Vietnam;

16 (C) the extent to which statutes, regula-
17 tions, rules, administrative and judicial deci-
18 sions, and other legal acts of the Government of
19 Vietnam are published and are made accessible
20 to the public;

21 (D) the extent to which administrative and
22 judicial decisions are supported by statements
23 of reasons that are based upon written statutes,
24 regulations, rules, and other legal acts of the
25 Government of Vietnam;

1 (E) the extent to which individuals are
2 treated equally under the laws of Vietnam with-
3 out regard to citizenship, race, religion, political
4 opinion, or current or former associations;

5 (F) the extent to which administrative and
6 judicial decisions are independent of political
7 pressure or governmental interference and are
8 reviewed by entities of appellate jurisdiction;
9 and

10 (G) the extent to which laws in Vietnam
11 are written and administered in ways that are
12 consistent with international human rights
13 standards, including the requirements of the
14 International Covenant on Civil and Political
15 Rights.

16 (b) CONTACTS WITH OTHER ORGANIZATIONS.—In
17 preparing the report under subsection (a), the Secretary
18 shall, as appropriate, seek out and maintain contacts with
19 nongovernmental organizations and human rights advo-
20 cates (including Vietnamese-Americans and human rights
21 advocates in Vietnam), including receiving reports and up-
22 dates from such organizations and evaluating such re-
23 ports. The Secretary shall also seek to consult with the

- 1 United States Commission on International Religious
- 2 Freedom for appropriate sections of the report.

