IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2012

Received; read twice and referred to the Committee on Foreign Relations

AN ACT

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,
SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Vietnam Human Rights Act of 2012”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purpose.
Sec. 3. Prohibition on increased nonhumanitarian assistance to the Government of Vietnam.
Sec. 4. United States public diplomacy.
Sec. 5. Annual report.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) The relationship between the United States and the Socialist Republic of Vietnam has grown substantially since the end of the trade embargo in 1994, with annual trade between the two countries reaching over $20,000,000,000 in 2011.

(2) The Government of Vietnam’s transition toward greater economic freedom and trade has not been matched by greater political freedom and substantial improvements in basic human rights for Vietnamese citizens, including freedom of religion, expression, association, and assembly.

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

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

(5) Although in recent years the National Assembly of Vietnam has played an increasingly active role as a forum for highlighting local concerns, corruption, and inefficiency, the National Assembly remains subject to the direction of the CPV and the CPV maintains control over the selection of candidates in national and local elections.

(6) The Government of Vietnam forbids public challenge to the legitimacy of the one-party state, restricts freedoms of opinion, the press, and association and tightly limits access to the Internet and telecommunication.

(7) Since Vietnam’s accession to the WTO on January 11, 2007, the Government of Vietnam arbitrarily arrested and imprisoned numerous individuals for their peaceful advocacy of religious freedom, democracy, and human rights, including Father Nguyen Van Ly, human rights lawyers Nguyen Van Dai, Le Thi Cong Nhan, Cu Huy Ha Vu, and Le
Cong Dinh, and bloggers Nguyen Van Hai and Phan Thanh Hai.

(8) The Government of Vietnam continues to detain, imprison, place under house arrest, convict, or otherwise restrict persons for the peaceful expression of dissenting political or religious views.

(9) The Government of Vietnam has also failed to improve labor rights, continues to arrest and harass labor leaders, and restricts the right to organize independently.

(10) The Government of Vietnam continues to limit the freedom of religion, restrict the operations of independent religious organizations, and persecute believers whose religious activities the Government regards as a potential threat to its monopoly on power.

(11) Despite reported progress in church openings and legal registrations of religious venues, the Government of Vietnam has halted most positive actions since the Department of State lifted the “country of particular concern” (CPC) designation for Vietnam in November 2006.

(12) Unregistered ethnic minority Protestant congregations, particularly Montagnards in the Central and Northwest Highlands, suffer severe abuses
because of actions by the Government of Vietnam, which have included forced renunciations of faith, arrest and harassment, the withholding of social programs provided for the general population, confiscation and destruction of property, subjection to severe beatings, and reported deaths.

(13) There has been a pattern of violent responses by the Government to peaceful prayer vigils and demonstrations by Catholics for the return of Government-confiscated church properties. Protesters have been harassed, beaten, and detained and church properties have been destroyed. Catholics also continue to face some restrictions on selection of clergy, the establishment of seminaries and seminary candidates, and individual cases of travel and church registration.

(14) In May 2010 the village of Con Dau, a Catholic parish in Da Nang, faced escalated violence during a funeral procession as police attempted to prohibit a religious burial in the village cemetery; more than 100 villagers were injured, 62 were arrested, five were tortured, and at least three died.

(15) The Unified Buddhist Church of Vietnam (UBCV) suffers persecution as the Government of Vietnam continues to restrict contacts and move-
ment of senior UBCV clergy for refusing to join the
state-sponsored Buddhist organization, the Govern-
ment restricts expression and assembly, and the
Government continues to harass and threaten UBCV
monks, nuns, and youth leaders.

(16) The Government of Vietnam continues to
suppress the activities of other religious adherents,
including Cao Dai and Hoa Hao Buddhists who lack
official recognition or have chosen not to affiliate
with the state-sanctioned groups, including through
the use of detention, imprisonment, and strict Gov-
ernment oversight.

(17) During Easter weekend in April 2004,
thousands of Montagnards gathered to protest their
treatment by the Government of Vietnam, including
the confiscation of tribal lands and ongoing restric-
tions on religious activities. Credible reports indicate
that the protests were met with violent response as
many demonstrators were arrested, injured, or went
into hiding, and that others were killed. Many of
these Montagnards and others are still serving long
sentences for their involvement in peaceful dem-
Montagnards continue to face threats, detention,
beatings, forced renunciation of faith, property de-
struction, restricted movement, and reported deaths at the hands of Government officials.

(18) Ethnic minority Hmong in the Northwest Highlands of Vietnam also suffer restrictions, abuses, and persecution by the Government of Vietnam, and although the Government is now allowing some Hmong Protestants to organize and conduct religious activities, some Government officials continue to deny or ignore additional applications for registration, and to persecute churches and believers who do not wish to affiliate with Government-controlled religious entities.

(19) In 2007, the Government of Vietnam arrested, beat, and defrocked several ethnic Khmer Buddhists in response to a peaceful religious protest. The Government continues to restrict Khmer Krom expression, assembly, association, and controls all religious organizations and prohibits most peaceful protests.

(20) The Government of Vietnam controls all print and electronic media, including access to the Internet, jams the signals of some foreign radio stations, including Radio Free Asia, and has detained and imprisoned individuals who have posted, pub-
lished, sent, or otherwise distributed democracy-rel-
ated materials.

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

(22) Vietnam continues to be a source country for the commercial sexual exploitation and forced labor of women and girls, as well as for men and women legally entering into international labor contracts who subsequently face conditions of debt bondage or forced labor, and is a destination country for child trafficking and continues to have internal human trafficking.

(23) Although the Government of Vietnam reports progress in combating human trafficking, it does not fully comply with the minimum standards for the elimination of trafficking, and is not making substantial efforts to comply.

(24) United States refugee resettlement pro-
grams, including the Humanitarian Resettlement
(HR) Program, the Orderly Departure Program (ODP), Resettlement Opportunities for Vietnamese Returnees (ROVR) Program, general resettlement of boat people from refugee camps throughout Southeast Asia, the Amerasian Homecoming Act of 1988, and the Priority One Refugee resettlement category, have helped rescue Vietnamese nationals who have suffered persecution on account of their associations with the United States or, in many cases, because of such associations by their spouses, parents, or other family members, as well as other Vietnamese nationals who have been persecuted because of race, religion, nationality, political opinion, or membership in a particular social group.

(25) While previous programs have served their purposes well, a significant number of eligible refugees from Vietnam were unfairly denied or excluded, including Amerasians, in some cases by vindictive or corrupt Vietnamese officials who controlled access to the programs, and in others by United States personnel who imposed unduly restrictive interpretations of program criteria. In addition, the Government of Vietnam has denied passports to persons who the United States has found eligible for refugee admission.

(27) To date, over 60,000 people have signed a petition calling on the Administration to not expand trade with communist Vietnam at the expense of human rights.

(28) Congress has passed numerous resolutions condemning human rights abuses in Vietnam, indicating that although there has been an expansion of relations with the Government of Vietnam, it should not be construed as approval of the ongoing and serious violations of fundamental human rights in Vietnam.

(b) PURPOSE.—The purpose of this Act is to promote the development of freedom and democracy in Vietnam.

SEC. 3. PROHIBITION ON INCREASED NONHUMANITARIAN ASSISTANCE TO THE GOVERNMENT OF VIETNAM.

(a) ASSISTANCE.—

(1) IN GENERAL.—Except as provided in subsection (b), the Federal Government may not provide nonhumanitarian assistance to the Government of Vietnam during any fiscal year in an amount that
exceeds the amount of such assistance provided during fiscal year 2011 unless—

(A) the Federal Government provides assistance, in addition to the assistance authorized under section 4, supporting the creation and facilitation of human rights training, civil society capacity building, noncommercial rule of law programming, and exchange programs between the Vietnamese National Assembly and the United States Congress at levels commensurate with, or exceeding, any increases in non-humanitarian assistance to Vietnam;

(B) with respect to the limitation for fiscal year 2012, the President determines and certifies to Congress, not later than 30 days after the date of the enactment of this Act, that the requirements of subparagraphs (A) through (G) of paragraph (2) have been met during the 12-month period ending on the date of the certification; and

(C) with respect to the limitation for subsequent fiscal years, the President determines and certifies to Congress, in the most recent annual report submitted pursuant to section 5, that the requirements of subparagraphs (A)
through (G) of paragraph (2) have been met during the 12-month period covered by the report.

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

(A) The Government of Vietnam has made substantial progress toward releasing all political and religious prisoners from imprisonment, house arrest, and other forms of detention.

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

(i) respecting the right to freedom of religion, including the right to participate in religious activities and institutions without interference, harassment, or involvement of the Government, for all of Vietnam’s diverse religious communities; and

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

(C) The Government of Vietnam has made substantial progress toward respecting the right to freedom of expression, assembly, and association, including the release of independent jour-
nalists, bloggers, and democracy and labor activists.

(D) The Government of Vietnam has made substantial progress toward repealing or revising laws that criminalize peaceful dissent, independent media, unsanctioned religious activity, and nonviolent demonstrations and rallies, in accordance with international standards and treaties to which Vietnam is a party.

(E) The Government of Vietnam has made substantial progress toward allowing Vietnamese nationals free and open access to United States refugee programs.

(F) The Government of Vietnam has made substantial progress toward respecting the human rights of members of all ethnic and minority groups.

(G) Neither any official of the Government of Vietnam nor any agency or entity wholly or partly owned by the Government of Vietnam was complicit in a severe form of trafficking in persons, or the Government of Vietnam took all appropriate steps to end any such complicity and hold such official, agency, or entity fully accountable for its conduct.
(b) Exception.—

(1) Continuation of assistance in the national interest.—Notwithstanding the failure of the Government of Vietnam to meet the requirements of subsection (a)(2), the President may waive the application of subsection (a) for any fiscal year if the President determines that the provision to the Government of Vietnam of increased nonhumanitarian assistance would promote the purpose of this Act or is otherwise in the national interest of the United States.

(2) Exercise of waiver authority.—The President may exercise the authority under paragraph (1) with respect to—

(A) all United States nonhumanitarian assistance to Vietnam; or

(B) one or more programs, projects, or activities of such assistance.

(c) Definitions.—In this section:

(1) Nonhumanitarian assistance.—The term “nonhumanitarian assistance” means—

(A) any assistance under the Foreign Assistance Act of 1961 (including programs under title IV of chapter 2 of part I of that Act, relat-
ing to the Overseas Private Investment Corporation), other than—

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

(ii) assistance which involves the provision of food (including monetization of food) or medicine;

(iii) assistance for environmental remediation of dioxin-contaminated sites and related health activities;

(iv) assistance to combat severe forms of trafficking in persons;

(v) assistance to combat pandemic diseases;

(vi) assistance for refugees; and

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

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

(2) SEVERE FORM OF TRAFFICKING IN PERSONS.—The term “severe form of trafficking in persons” means any activity described in section 103(8) of the Trafficking Victims Protection Act of 2000
16

(Public Law 106–386 (114 Stat. 1470); 22 U.S.C.
7102(8)).

(d) EFFECTIVE DATE.—This section shall take effect
on the date of the enactment of this Act and shall apply
with respect to the provision of nonhumanitarian assist-
ance to the Government of Vietnam during fiscal year
2013 and subsequent fiscal years.

SEC. 4. UNITED STATES PUBLIC DIPLOMACY.

(a) RADIO FREE ASIA TRANSMISSIONS TO VIET-
NAM.—It is the sense of Congress that the United States
should take measures to overcome the jamming of Radio
Free Asia by the Government of Vietnam and that the
Broadcasting Board of Governors should not cut staffing,
funding, or broadcast hours for the Vietnamese language
services of the Voice of America and Radio Free Asia,
which shall be done without reducing any other broadcast
language services.

(b) UNITED STATES EDUCATIONAL AND CULTURAL
EXCHANGE PROGRAMS WITH VIETNAM.—It is the sense
of Congress that any programs of educational and cultural
exchange between the United States and Vietnam should
actively promote progress toward freedom and democracy
in Vietnam by providing opportunities to Vietnamese na-
tionals from a wide range of occupations and perspectives
to see freedom and democracy in action and, also, by en-
securing that Vietnamese nationals who have already demonstrated a commitment to these values are included in such programs.

SEC. 5. ANNUAL REPORT.

(a) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act and every 12 months thereafter, the Secretary of State shall submit to the Congress a report on the following:

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

(2) Steps taken to carry out section 3(a)(1)(A), if applicable.

(3) Efforts by the United States Government to promote access by the Vietnamese people to Radio Free Asia transmissions.

(4) Efforts to ensure that programs with Vietnam promote the policy set forth in section 102 of the Human Rights, Refugee, and Other Foreign Policy Provisions Act of 1996 regarding participation in programs of educational and cultural exchange.

(5) Lists of persons believed to be imprisoned, detained, or placed under house arrest, tortured, or otherwise persecuted by the Government of Vietnam.
due to their pursuit of internationally recognized human rights. In compiling such lists, the Secretary shall exercise appropriate discretion, including concerns regarding the safety and security of, and benefit to, the persons who may be included on the lists and their families. In addition, the Secretary shall include a list of such persons and their families who may qualify for protections under United States refugee programs.

(6) A description of the development of the rule of law in Vietnam, including—

(A) progress toward the development of institutions of democratic governance;

(B) processes by which statutes, regulations, rules, and other legal acts of the Government of Vietnam are developed and become binding within Vietnam;

(C) the extent to which statutes, regulations, administrative and judicial decisions, and other legal acts of the Government of Vietnam are published and are made accessible to the public;

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

(E) the extent to which individuals are treated equally under the laws of Vietnam without regard to citizenship, race, religion, political opinion, or current or former associations;

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

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

(b) CONTACTS WITH OTHER ORGANIZATIONS.—In preparing the report under subsection (a), the Secretary shall, as appropriate, seek out and maintain contacts with nongovernmental organizations and human rights advocates (including Vietnamese-Americans and human rights advocates in Vietnam), including receiving reports and updates from such organizations and evaluating such reports. The Secretary shall also seek to consult with the
United States Commission on International Religious Freedom for appropriate sections of the report.

Passed the House of Representatives September 11, 2012.

Attest:

KAREN L. HAAS, 
Clerk.