

110TH CONGRESS
2D SESSION

S. 3678

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

IN THE SENATE OF THE UNITED STATES

OCTOBER 1 (legislative day, SEPTEMBER 17), 2008

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 2008”.

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 \$12,000,000,000 in trade between
7 the United States and Vietnam in 2007.

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 2008 Annual Report of the
19 United States Commission on International Reli-
20 gious Freedom, "Vietnam's overall human rights
21 record remains very poor and in fact has deterio-
22 rated since [January 2007] . . . More than 30 legal
23 and political reform advocates, free speech activists,
24 labor unionists, and independent religious leaders
25 and religious freedom advocates were arrested in

1 2007, placed under home detention or surveillance,
2 threatened, intimidated, and/or harassed.”.

3 (7) The continued expansion of the relationship
4 between the Government of Vietnam and the Gov-
5 ernment of the United States should be matched by
6 significant improvement in human rights for Viet-
7 nameese citizens, particularly those enshrined in the
8 International Covenant on Civil and Political Rights,
9 of which Vietnam is a signatory.

10 **SEC. 3. PURPOSE.**

11 The purpose of this Act is to promote the develop-
12 ment of freedom, human rights, and the rule of law in
13 Vietnam.

14 **TITLE I—PROHIBITION ON IN-**
15 **CREASED NONHUMANI-**
16 **TARIAN ASSISTANCE TO VIET-**
17 **NAM**

18 **SEC. 101. BILATERAL NONHUMANITARIAN ASSISTANCE.**

19 (a) ASSISTANCE.—

20 (1) IN GENERAL.—Except as provided under
21 subsection (b), the Federal Government may not
22 provide the Government of Vietnam with non-
23 humanitarian development, trade, economic, and se-
24 curity assistance during any fiscal year that exceeds

1 the amount of such assistance provided during fiscal
2 year 2008 unless—

3 (A) the Federal Government provides as-
4 sistance, in addition to the assistance author-
5 ized under section 301(c), supporting the cre-
6 ation and facilitation of human rights training,
7 civil society capacity building, noncommercial
8 rule of law programming, and exchange pro-
9 grams between the Vietnamese National Assem-
10 bly and the United States Congress (referred to
11 in this section as “additional human rights pro-
12 gramming”) at levels commensurate with, or ex-
13 ceeding, any increases in nonhumanitarian de-
14 velopment, trade, economic, and security assist-
15 ance programming to Vietnam;

16 (B) with respect to the limitation for fiscal
17 year 2009, the President determines and cer-
18 tifies to Congress, not later than 30 days after
19 the date of the enactment of this Act, that the
20 requirements under subparagraphs (A) through
21 (F) of paragraph (2) have been met during the
22 12-month period ending on the date of the cer-
23 tification; and

24 (C) with respect to the limitation for sub-
25 sequent fiscal years, the President determines

1 and certifies to Congress, in the most recent
2 annual report submitted pursuant to section
3 501, that the requirements under subpara-
4 graphs (A) through (F) of paragraph (2) have
5 been met during the 12-month period covered
6 by the report.

7 (2) REQUIREMENTS.—The requirements of this
8 paragraph are met if—

9 (A) the Government of Vietnam has made
10 substantial progress toward releasing all polit-
11 ical and religious prisoners from imprisonment,
12 house arrest, and other forms of detention;

13 (B) the Government of Vietnam has made
14 substantial progress toward—

15 (i) respecting the right to the freedom
16 of expression, assembly, and association,
17 including the release of independent jour-
18 nalists, bloggers, democracy, and labor ac-
19 tivists;

20 (ii) repealing or revising laws that
21 criminalize peaceful dissent, independent
22 media, unsanctioned religious activity, and
23 nonviolent demonstrations and rallies, in
24 accordance with international standards
25 and treaties to which Vietnam is a party;

1 (iii) respecting the right to the free-
2 dom of religion, including the right to par-
3 ticipate in religious activities and institu-
4 tions without inference, harassment, or in-
5 volvement of the Government, for all of
6 Vietnam's diverse religious communities,
7 including the Unified Buddhist Church of
8 Vietnam, Catholics, Protestants, Hoa Hao
9 Buddhism, CaoDai, Khmer Buddhists, and
10 other religious communities; and

11 (iv) returning estates and properties
12 confiscated from Vietnam's religious com-
13 munities;

14 (C) the Government of Vietnam has made
15 substantial progress toward allowing Viet-
16 namese nationals free and open access to
17 United States refugee programs;

18 (D) the Government of Vietnam has made
19 substantial progress toward granting its citizens
20 the right to travel outside Vietnam without sig-
21 nificant restriction;

22 (E) the Government of Vietnam has made
23 substantial progress toward protecting the
24 human rights, language, culture, land rights,

1 and religion of all ethnic and minority groups;
2 and

3 (F)(i) no official of the Government of
4 Vietnam and no 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

8 (ii) the Government of Vietnam took all
9 appropriate steps to end any such complicity
10 and hold any official, agency, or entity respon-
11 sible for such complicity fully accountable for
12 such conduct.

13 (b) EXCEPTION.—

14 (1) CONTINUATION OF ASSISTANCE IN THE NA-
15 TIONAL INTEREST.—If the Government of Vietnam
16 fails to meet the requirements under subsection
17 (a)(2), the President may waive the application of
18 subsection (a) for any fiscal year if the President de-
19 termines that increased nonhumanitarian assistance
20 to the Government of Vietnam—

21 (A) would promote the purposes of this
22 Act; or

23 (B) is otherwise in the national interest of
24 the United States.

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

4 (A) all United States nonhumanitarian as-
5 sistance to Vietnam; or

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

8 (c) DEFINITIONS.—In this section:

9 (1) SEVERE FORMS OF TRAFFICKING IN PER-
10 SONS.—The term “severe forms of trafficking in
11 persons” has the meaning given the term in section
12 103(8) of the Trafficking Victims Protection Act of
13 2000 (Public Law 106–386 (114 Stat. 1470); 22
14 U.S.C. 7102(8)).

15 (2) UNITED STATES NONHUMANITARIAN AS-
16 SISTANCE.—The term “United States nonhumani-
17 tarian assistance” means—

18 (A) any assistance authorized under the
19 Foreign Assistance Act of 1961 (22 U.S.C.
20 2151 et seq.), including programs under title IV
21 of chapter 2 of part I of such Act relating to
22 the Overseas Private Investment Corporation,
23 except for—

1 (i) disaster relief assistance, including
2 any assistance under chapter 9 of part I of
3 such Act;

4 (ii) assistance which involves the pro-
5 vision of food (including monetization of
6 food), health care, or medicine;

7 (iii) assistance for refugees; and

8 (iv) assistance to combat HIV/AIDS,
9 including any assistance under section
10 104A of such Act; and

11 (B) sales, or financing on any terms, au-
12 thorized under the Arms Export Control Act
13 (22 U.S.C. 2751 et seq.).

14 **TITLE II—PROHIBITION ON GEN-**
15 **ERALIZED SYSTEM OF PREF-**
16 **ERENCES AUTHORITY FOR**
17 **VIETNAM**

18 **SEC. 201. PROHIBITION ON GENERALIZED SYSTEM OF**
19 **PREFERENCES.**

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

1 (1) fully protects the freedom of association, in
2 law and in practice; and

3 (2) does not engage in or condone serious viola-
4 tions of the rights of workers, including the deten-
5 tion, harassment, or arrest of labor activists or indi-
6 viduals who write, speak, or otherwise disseminate
7 information relating to labor rights.

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

12 **SEC. 301. ASSISTANCE.**

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

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

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

24 (1) \$2,000,000 for each of the fiscal years 2009
25 and 2010; and

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

4 **TITLE IV—UNITED STATES**
5 **PUBLIC DIPLOMACY**

6 **SEC. 401. SENSE OF CONGRESS ON DIPLOMACY WITH THE**
7 **GOVERNMENT OF VIETNAM.**

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

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

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

24 (A) legally operate without government re-
25 strictions; and

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

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

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

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

11 (A) language instruction;

12 (B) cultural preservation;

13 (C) religious freedom;

14 (D) land rights; and

15 (E) the freedom of assembly;

16 (6) respecting the freedom of association, in-
17 cluding—

18 (A) protecting the rights of independent
19 labor activists;

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

23 (C) not engaging in or condoning serious
24 violations of the rights of workers;

1 (7) respecting the freedom of expression, in-
2 cluding—

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

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

8 (C) removing filtering, surveillance, and
9 other restrictions on internet usage; and

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

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

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

19 (B) the right to legal representation and a
20 fair trial;

21 (9) repealing provisions in Vietnamese law that
22 criminalize peaceful dissent, independent media,
23 unsanctioned religious activity, and non-violent dem-
24 onstrations and rallies, including—

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

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

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

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

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

- 1 (1) Vietnamese-American groups;
- 2 (2) representatives from the Khmer,
3 Montagnard, and Hmong communities;
- 4 (3) human rights organizations, including inter-
5 national human rights organizations; and
- 6 (4) the United States Commission on Inter-
7 national Religious Freedom.

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

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

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

- 18 (1) \$9,100,000 for fiscal year 2009; and
- 19 (2) \$1,100,000 for fiscal year 2010.

20 **SEC. 403. UNITED STATES EDUCATIONAL AND CULTURAL**
21 **EXCHANGE PROGRAMS WITH VIETNAM.**

22 It is the policy of the United States that programs
23 of educational and cultural exchange with Vietnam should
24 actively promote progress toward freedom in Vietnam
25 by—

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

5 (2) ensuring that Vietnamese nationals who
6 have already demonstrated a commitment to such
7 values are included in such programs.

8 **TITLE V—UNITED STATES**
9 **REFUGEE POLICY**

10 **SEC. 501. REFUGEE RESETTLEMENT FOR NATIONALS OF**
11 **VIETNAM.**

12 (a) POLICY OF THE UNITED STATES.—It is the pol-
13 icy of the United States to offer refugee resettlement to
14 nationals of Vietnam (including members of the
15 Montagnard ethnic minority groups) who were eligible for
16 the Humanitarian Resettlement Program, the Orderly De-
17 parture Program, Resettlement Opportunities for Viet-
18 namese Returnees Program, the Amerasian Homecoming
19 Act of 1988, or any other United States refugee program
20 and who were deemed ineligible due to administrative
21 error or who for reasons beyond the control of such indi-
22 viduals (including insufficient or contradictory information
23 or the inability to pay bribes demanded by officials of the
24 Government of Vietnam) were unable or failed to apply

1 for such programs in compliance with deadlines imposed
2 by the Department of State.

3 (b) AUTHORIZED ACTIVITIES.—Of the amounts au-
4 thorized to be appropriated to the Department of State
5 for Migration and Refugee Assistance for each of the fiscal
6 years 2009, 2010, and 2011, such sums as may be nec-
7 essary shall be made available for the protection (including
8 resettlement, as appropriate) of Vietnamese refugees and
9 asylum seekers, including Montagnards in Cambodia.

10 **TITLE VI—ANNUAL REPORT ON**
11 **PROGRESS TOWARD FREE-**
12 **DOM, HUMAN RIGHTS, AND**
13 **THE RULE OF LAW IN VIET-**
14 **NAM**

15 **SEC. 601. ANNUAL REPORT.**

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

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

23 (2)(A) the determination and certification of
24 the President that the requirements of subpara-

1 graphs (A) through (E) of section 101(a)(2) have
2 been met, if applicable; and

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

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

7 (4) a description of the efforts by the United
8 States Government to secure transmission sites for
9 Radio Free Asia in countries in close geographical
10 proximity to Vietnam, in accordance with section
11 301(a);

12 (5) a description of the efforts to ensure that
13 programs with Vietnam promote the policy described
14 in section 302 of this Act and in section 105 of the
15 Human Rights, Refugee, and Other Foreign Policy
16 Provisions Act of 1996, regarding participation in
17 programs of educational and cultural exchange;

18 (6) the steps taken to carry out the policy de-
19 scribed in section 402(a);

20 (7) lists of persons believed to be imprisoned,
21 detained, placed under house arrest, tortured, or
22 otherwise persecuted by the Government of Vietnam
23 due to their pursuit of internationally recognized
24 human rights, which is compiled by the Secretary
25 with appropriate discretion, including concerns re-

1 regarding the safety and security of, and benefit to,
2 the persons who may be included on the lists and
3 their families;

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

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

9 (A) progress made toward the development
10 of institutions of democratic governance in Viet-
11 nam;

12 (B) the processes by which statutes, regu-
13 lations, rules, and other legal acts of the Gov-
14 ernment 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 based upon written statutes, regula-
24 tions, rules, and other legal acts of the Govern-
25 ment 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—

19 (1) seek out and maintain contacts with non-
20 governmental organizations and human rights advo-
21 cates (including Vietnamese-Americans and human
22 rights advocates in Vietnam), as appropriate;

23 (2) receive reports and updates from such orga-
24 nizations and evaluate such reports; and

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

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