

109TH CONGRESS
1ST SESSION

H. R. 3190

To promote freedom and democracy in Vietnam.

IN THE HOUSE OF REPRESENTATIVES

JUNE 30, 2005

Mr. SMITH of New Jersey (for himself, Mr. ROYCE, Ms. ZOE LOFGREN of California, Mr. SAM JOHNSON of Texas, Mr. TOM DAVIS of Virginia, Mr. WOLF, Mr. ROHRBACHER, Mr. PAYNE, Mr. PENCE, Mr. GREEN of Wisconsin, Ms. ROS-LEHTINEN, Mr. CROWLEY, and Ms. LORETTA SANCHEZ of California) introduced the following bill; which was referred to the Committee on International Relations

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 2005”.

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 NONHUMANITARIAN ASSISTANCE TO
THE GOVERNMENT OF VIETNAM

Sec. 101. Bilateral nonhumanitarian assistance.

TITLE II—ASSISTANCE TO SUPPORT DEMOCRACY IN VIETNAM

Sec. 201. Assistance.

TITLE III—UNITED STATES PUBLIC DIPLOMACY

Sec. 301. Radio Free Asia transmissions to Vietnam.

Sec. 302. United States educational and cultural exchange programs with Vietnam.

TITLE IV—UNITED STATES REFUGEE POLICY

Sec. 401. Refugee resettlement for nationals of Vietnam.

TITLE V—ANNUAL REPORT ON PROGRESS TOWARD FREEDOM AND DEMOCRACY IN VIETNAM

Sec. 501. 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 over the past 10 years, with annual
6 trade between the two countries reaching over \$6
7 billion per year.

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 human rights.

12 (3) Vietnam remains a one party state, ruled
13 and controlled by the Communist Party of Vietnam
14 (CPV), which continues to deny the right of citizens
15 to change their government.

16 (4) Although in recent years the National As-
17 sembly of Vietnam has played an increasingly active

1 role as a forum for highlighting local concerns, cor-
2 ruption, and inefficiency, the National Assembly re-
3 mains subject to the direction of the Communist
4 Party of Vietnam and the CPV maintains control
5 over the selection of candidates in national and local
6 elections.

7 (5) The Government of Vietnam forbids public
8 challenge to the legitimacy of the one party state, re-
9 stricts freedoms of opinion, the press, and associa-
10 tion and tightly limits access to the Internet and
11 telecommunication.

12 (6) The Government of Vietnam continues to
13 detain and imprison persons for the peaceful expres-
14 sion of dissenting religious and political views, in-
15 cluding Pham Hong Son, Nguyen Vu Binh, Nguyen
16 Khac Toan, Brother Nguyen Thien Phung, Rev-
17 erend Than Van Truong and Pastor Nguyen Hong
18 Quang, among others.

19 (7) While the Government of Vietnam recently
20 released a handful of political and religious pris-
21 oners, including Dr. Nguyen Dan Que, Professor
22 Nguyen Dinh Huy, Father Nguyen Van Ly, and
23 Venerable Thich Thien Minh, these individuals re-
24 main under close surveillance by the Government of

1 Vietnam, which has included house detention or po-
2 lice surveillance.

3 (8)(A) The Government of Vietnam limits free-
4 dom of religion and restricts the operation of reli-
5 gious organizations, allowing only religious organiza-
6 tions officially approved by the Government of Viet-
7 nam, but often restricting their selection and train-
8 ing of religious leaders as well as their activities.

9 (B) On September 15, 2004, Vietnam was de-
10 clared a Country of Particular Concern by the De-
11 partment of State for its severe violations of reli-
12 gious freedom, and despite an agreement concluded
13 with the Department of State in May 2005 commit-
14 ting to greater religious freedom, the Government of
15 Vietnam continues to commit serious human rights
16 abuses in this area.

17 (C) Unregistered ethnic minority Protestant
18 congregations in the Northwest and Central High-
19 lands of Vietnam suffer severe abuses because of ac-
20 tions by the Government of Vietnam, which have in-
21 cluded forced renunciations of faith, the closure and
22 destruction of churches, the arrest and harassment
23 of pastors, and the withholding of social programs
24 provided for the general population, and in a few

1 cases credible reports indicate that minority religious
2 leaders have been beaten and even killed.

3 (D) The Unified Buddhist Church of Vietnam
4 (UBCV) suffers severe persecution as the Govern-
5 ment of Vietnam confiscated its temples and per-
6 secuted its clergy for refusing to join the state-spon-
7 sored Buddhist organizations and continually has
8 detained and confined senior UBCV clergy, includ-
9 ing the Most Venerable Thich Huyen Quang, the
10 Most Venerable Thich Quang Do, the Venerable
11 Thich Tue Sy, and others.

12 (E) The Catholic Church continues to face sig-
13 nificant restrictions on the training and ordination
14 of priests and bishops, resulting in numbers insuffi-
15 cient to support the growing Catholic population in
16 Vietnam and officials of the Government of Vietnam
17 continue to limit the Catholic Church's conduct of
18 religious education classes and charitable activities.

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

1 (9) The Government of Vietnam controls all
2 print and electronic media, including access to the
3 Internet, jams the signals of some foreign radio sta-
4 tions, including Radio Free Asia, and has detained,
5 convicted, and imprisoned individuals who have post-
6 ed or sent democracy-related materials via the Inter-
7 net.

8 (10)(A) Indigenous Montagnards in the Central
9 Highlands of Vietnam continue to face particularly
10 severe persecution, with numerous cases of arbitrary
11 arrests and detentions and reports that many
12 Montagnards have gone into hiding, fearing arrest,
13 interrogation, or physical abuse by Government au-
14 thorities.

15 (B) During Easter weekend in April 2004,
16 thousands of Montagnards gathered to protest their
17 treatment by the Government of Vietnam, including
18 the confiscation of tribal lands and ongoing restric-
19 tions on religious activities, and credible reports in-
20 dicate that the protests were met with a violent re-
21 sponse as many demonstrators were arrested, in-
22 jured, or are in hiding, and that others were killed.

23 (C) Hundreds of Montagnards continue to flee
24 to neighboring countries, over 700 Montagnards re-
25 side in different refugee camps operated by the

1 United Nations High Commissioner for Refugees in
2 Cambodia, and numerous Montagnards have been
3 involuntarily repatriated to Vietnam by the Govern-
4 ment of Cambodia, in violation of international law.

5 (11) Ethnic minority Hmong in the Northwest
6 Highlands of Vietnam also suffer persecution by the
7 Government of Vietnam, but as with the Central
8 Highlands region, access to the Northwest High-
9 lands by diplomats, nongovernmental organizations,
10 journalists, and other foreigners is severely re-
11 stricted, making it difficult to verify conditions.

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

20 (B) Members of the Mennonite Church such as
21 Pham Ngoc Thach, Nguyen Van Phuong, Nguyen
22 Thanh Nhan, and Nguyen Huu Nghia were repeat-
23 edly tortured prior to their sentencing and authori-
24 ties have also reportedly increasingly resorted to psy-
25 chiatric torture against religious prisoners such as

1 Ms. Le Thi Hong Lien and Pastor Than Van
2 Truong.

3 (13)(A) United States refugee resettlement pro-
4 grams, including the Orderly Departure Program
5 (ODP), the Resettlement Opportunities for Return-
6 ing Vietnamese (ROVR) program, general resettlement
7 of boat people from refugee camps throughout
8 Southeast Asia, the Amerasian Homecoming Act of
9 1988, and the Priority One Refugee resettlement
10 category have helped rescue Vietnamese nationals
11 who have suffered persecution on account of their
12 associations with the United States as well as Viet-
13 nameese nationals who have been persecuted because
14 of race, religion, nationality, political opinion, or
15 membership in a particular social group.

16 (B) While previous programs have served their
17 purposes well, a significant number of eligible refu-
18 gees from Vietnam were unfairly denied or excluded,
19 including Amerasians, in some cases by vindictive or
20 corrupt Vietnamese officials who controlled access to
21 the programs, and in others by United States per-
22 sonnel who imposed unduly restrictive interpreta-
23 tions of program criteria. In addition, the Govern-
24 ment of Vietnam has denied passports to persons

1 that the United States has found eligible for refugee
2 admission.

3 (C) The Department of State has agreed to ex-
4 tend the September 30, 1994, registration deadline
5 for former United States employees, “re education”
6 survivors, and surviving spouses of those who did
7 not survive “re-education” camps to sign up for
8 United States refugee programs, as well as to re-
9 sume the Vietnamese In Country Priority One Pro-
10 gram in Vietnam to provide protection to victims of
11 persecution on account of race, religion, nationality,
12 political opinion, or membership in a particular so-
13 cial group who otherwise have no access to the Or-
14 derly Departure Program.

15 (D) The former United States Immigration and
16 Naturalization Service agreed to resume the proc-
17 essing of former United States employees under the
18 U11 program, which had been unilaterally sus-
19 pended by the United States Government, as well as
20 to review the applications of Amerasians, children of
21 American servicemen left behind in Vietnam after
22 the war ended in April 1975, for resettlement to the
23 United States under the Amerasian Homecoming
24 Act of 1988.

1 (14) Congress has passed numerous resolutions
2 condemning human rights abuses in Vietnam, indi-
3 cating that although there has been an expansion of
4 relations with the Government of Vietnam, it should
5 not be construed as approval of the ongoing and se-
6 rious violations of fundamental human rights in
7 Vietnam.

8 (15) Enhancement of relations between the
9 United States and Vietnam has provided an oppor-
10 tunity for a human rights dialogue and could lead to
11 future progress on human rights issues in Vietnam.

12 **SEC. 3. PURPOSE.**

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

15 **TITLE I—PROHIBITION ON NON-**
16 **HUMANITARIAN ASSISTANCE**
17 **TO THE GOVERNMENT OF**
18 **VIETNAM**

19 **SEC. 101. BILATERAL NONHUMANITARIAN ASSISTANCE.**

20 (a) ASSISTANCE.—

21 (1) IN GENERAL.—Except as provided in sub-
22 section (b), United States nonhumanitarian assist-
23 ance may not be provided to the Government of
24 Vietnam—

1 (A) for fiscal year 2006 unless not later
2 than 30 days after the date of the enactment of
3 this Act the President determines and certifies
4 to Congress that the requirements of subpara-
5 graphs (A) through (D) of paragraph (2) have
6 been met during the 12-month period ending on
7 the date of the certification; and

8 (B) for each subsequent fiscal year unless
9 the President determines and certifies to Con-
10 gress in the most recent annual report sub-
11 mitted pursuant to section 501 that the re-
12 quirements of subparagraphs (A) through (E)
13 of paragraph (2) have been met during the 12-
14 month period covered by the report.

15 (2) REQUIREMENTS.—The requirements of this
16 paragraph are that—

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

21 (B)(i) the Government of Vietnam has
22 made substantial progress toward respecting
23 the right to freedom of religion, including the
24 right to participate in religious activities and in-

1 stitutions without interference by or involve-
2 ment of the Government; and

3 (ii) has made substantial progress toward
4 returning estates and properties confiscated
5 from the churches;

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

10 (D) the Government of Vietnam has made
11 substantial progress toward respecting the
12 human rights of members of ethnic minority
13 groups in the Central Highlands or elsewhere in
14 Vietnam; and

15 (E)(i) neither any official of the Govern-
16 ment of Vietnam nor any agency or entity whol-
17 ly or partly owned by the Government of Viet-
18 nam was complicit in a severe form of traf-
19 ficking in persons; or

20 (ii) the Government of Vietnam took all
21 appropriate steps to end any such complicity
22 and hold such official, agency, or entity fully
23 accountable for its conduct.

24 (b) EXCEPTION.—

1 (1) IN GENERAL.—Subsection (a) shall not
2 apply for any fiscal year with respect to the provi-
3 sion of United States nonhumanitarian assistance
4 for any program or activity for which such assist-
5 ance was provided to the Government of Vietnam for
6 fiscal year 2005 in an amount not to exceed the
7 amount so provided for fiscal year 2005.

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

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

21 (A) all United States nonhumanitarian as-
22 sistance to Vietnam; or

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

25 (c) DEFINITIONS.—In this section:

1 (1) SEVERE FORM OF TRAFFICKING IN PER-
2 SONS.—The term “severe form of trafficking in per-
3 sons” means any activity described in section 103(8)
4 of the Trafficking Victims Protection Act of 2000
5 (Public Law 106–386 (114 Stat. 1470); 22 U.S.C.
6 7102(8)).

7 (2) UNITED STATES NONHUMANITARIAN AS-
8 SISTANCE.—The term “United States nonhumani-
9 tarian assistance” means—

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

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

18 (ii) assistance which involves the pro-
19 vision of food (including monetization of
20 food) or medicine; and

21 (iii) assistance for refugees; and

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

1 **TITLE II—ASSISTANCE TO SUP-**
2 **PORT DEMOCRACY IN VIET-**
3 **NAM**

4 **SEC. 201. ASSISTANCE.**

5 (a) IN GENERAL.—The President is authorized to
6 provide assistance, through appropriate nongovernmental
7 organizations, for the support of individuals and organiza-
8 tions to promote internationally recognized human rights
9 in Vietnam.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—There
11 are authorized to be appropriated to the President to carry
12 out subsection (a) \$2,000,000 for each of the fiscal years
13 2006 and 2007.

14 **TITLE III—UNITED STATES**
15 **PUBLIC DIPLOMACY**

16 **SEC. 301. RADIO FREE ASIA TRANSMISSIONS TO VIETNAM.**

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

21 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
22 tion to such amounts as are otherwise authorized to be
23 appropriated for the Broadcasting Board of Governors,
24 there are authorized to be appropriated to carry out the

1 policy under subsection (a) \$9,100,000 for the fiscal year
2 2006 and \$1,100,000 for the fiscal year 2007.

3 **SEC. 302. UNITED STATES EDUCATIONAL AND CULTURAL**
4 **EXCHANGE PROGRAMS WITH VIETNAM.**

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

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

16 **SEC. 401. 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 Orderly Departure Program (ODP), Resettlement Op-
23 portunities for Vietnamese Returnees (ROVR), the
24 Amerasian Homecoming Act of 1988, or any other United
25 States refugee program and who were deemed ineligible

1 due to administrative error or who for reasons beyond the
2 control of such individuals (including insufficient or con-
3 tradictory information or the inability to pay bribes de-
4 manded by officials of the Government of Vietnam) were
5 unable or failed to apply for such programs in compliance
6 with deadlines imposed by the Department of State.

7 (b) AUTHORIZED ACTIVITY.—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 2006, 2007, and 2008, such sums as may be nec-
11 essary are authorized to be made available for the protec-
12 tion (including resettlement in appropriate cases) of Viet-
13 nameese refugees and asylum seekers, including
14 Montagnards in Cambodia.

15 **TITLE V—ANNUAL REPORT ON**
16 **PROGRESS TOWARD FREE-**
17 **DOM AND DEMOCRACY IN**
18 **VIETNAM**

19 **SEC. 501. 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 to the Con-
23 gress a report on the following:

24 (1)(A) The determination and certification of
25 the President that the requirements of subpara-

1 graphs (A) through (D) of section 101(a)(2) have
2 been met, if applicable.

3 (B) The determination of the President under
4 section 101(b)(2), if applicable.

5 (2) Efforts by the United States Government to
6 secure transmission sites for Radio Free Asia in
7 countries in close geographical proximity to Vietnam
8 in accordance with section 301(a).

9 (3) Efforts to ensure that programs with Viet-
10 nam promote the policy set forth in section 302 and
11 with section 102 of the Human Rights, Refugee, and
12 Other Foreign Policy Provisions Act of 1996 regard-
13 ing participation in programs of educational and cul-
14 tural exchange.

15 (4) Steps taken to carry out the policy under
16 section 401(a).

17 (5) Lists of persons believed to be imprisoned,
18 detained, or placed under house arrest, tortured, or
19 otherwise persecuted by the Government of Vietnam
20 due to their pursuit of the rights described in para-
21 graph (5). In compiling such lists, the Secretary
22 shall exercise appropriate discretion, including con-
23 cerns regarding the safety and security of, and ben-
24 efit to, the persons who may be included on the lists
25 and their families. In addition, the Secretary shall

1 include a list of such persons and their families who
2 may qualify for protection under United States ref-
3 ugee programs.

4 (6) A description of the development of the rule
5 of law in Vietnam, including, but not limited to—

6 (A) progress toward the development of in-
7 stitutions of democratic governance;

8 (B) processes by which statutes, regula-
9 tions, rules, and other legal acts of the Govern-
10 ment of Vietnam are developed and become
11 binding within Vietnam;

12 (C) the extent to which statutes, regula-
13 tions, rules, administrative and judicial deci-
14 sions, and other legal acts of the Government of
15 Vietnam are published and are made accessible
16 to the public;

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

22 (E) the extent to which individuals are
23 treated equally under the laws of Vietnam with-
24 out regard to citizenship, race, religion, political
25 opinion, or current or former associations;

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

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

12 (b) CONTACTS WITH OTHER ORGANIZATIONS.—In
13 preparing the report under subsection (a), the Secretary
14 shall, as appropriate, seek out and maintain contacts with
15 nongovernmental organizations and human rights advo-
16 cates (including Vietnamese-Americans, human rights ad-
17 vocates in Vietnam), including receiving reports and up-
18 dates from such organizations and evaluating such re-
19 ports. The Secretary shall also seek to consult with the
20 United States Commission on Religious Freedom for ap-
21 propriate sections of the report.

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