



**Statement before the
U.S. Commission on International Religious Freedom (USCIRF)**

***“Technological Surveillance of Religion
in China.”***

A Testimony by:

Amy Lehr

Director, Human Rights Initiative,
Center for Strategic and International Studies (CSIS)

**July 22, 2020
Cisco WebEx**

Chairwoman Manchin, Vice Chairman Perkins, Vice Chairwoman Bhargava, and Honorable Commissioners, thank you for the opportunity to speak to you today. I will discuss the challenge that new technologies pose and potential measures to reduce the risk that US technology companies and investors are involved in misuse of emerging technologies overseas.

Emerging technologies are often dual use – they can be used for good or for ill. Machine learning can help find new cures for severe illnesses, but it can also be used to analyze thousands of images instantaneously to enhance real time surveillance, including over ethnic and religious minorities. In China, these technologies have been used to target such minorities, and we see efforts in other countries to target political opponents, activists, and minority groups. Indeed, there is a massive global marketplace for new surveillance technology that is deeply opaque, highly lucrative, and frequented by governments with poor human rights records. This creates particular challenges for both regulators and the companies developing these products, and our thinking must evolve to meet this new challenge.

We need to avoid a race to the bottom. In the long term, a social license to use such technologies will depend on public trust. The US should ensure that it is the leading producer of trusted new technology that people are happy to have on their smart phones.

Fortunately, companies do have guidance as to how ensure their technology incorporates human rights standards. They just have to use it. The UN Guiding Principles on Business and Human Rights (“UN Guiding Principles”) – the first global guidance for companies regarding their human rights responsibilities -- were issued almost a decade ago.¹ They lay out a common sense management system framework called “human rights due diligence” that businesses can follow to understand and address their human rights impacts. The UN Guiding Principles have been voluntarily adopted by hundreds of the world’s leading companies. I spent a decade helping companies implement these standards. They are understood in the technology sector to mean that companies should integrate human rights concerns into product development – sometimes called “human rights by design.” At various points during product development, they should consider the human rights implications of what they are designing and make sure their design decisions help minimize potential misuse of the product. They also have a responsibility to conduct research on their customers and the risk of misuse and to not sell the technology if they have reason to believe it will be used to abuse human rights.

In the US, such human rights due diligence is not mandatory, although several of our largest technology companies have in place teams and management structures to carry it out. The challenge of course is all the smaller companies that don’t follow these practices. Also, it is very hard for companies to pass up customers, especially if their sales are unlikely to become known and lead to reputational damage. Purely voluntary measures can help companies become more aware of risks and manage them better, but are unlikely to fully address problems of US company involvement in abusive surveillance overseas.

¹ United Nations. 2011. *Guiding principles on business and human rights: implementing the United Nations "Protect, Respect and Remedy" framework*

Recognizing these limitations, the EU has announced an aggressive timeline to pass a law making human rights due diligence mandatory for a wide range of sectors,² and a number of large companies have supported this measure.³

US technology companies are not the only US actor that may be assisting surveillance of religious minorities. US investors also are a concern. An area that deserves more examination is whether US investors –public and private – are investing in Chinese technology companies involved in severe human rights abuses. Several large US pension funds were invested in Hikvision when it was put on the entities list last year.⁴ We have no way to know the extent to which US venture capital is being invested in companies known to be deeply involved in the large scale surveillance of religious minorities. Indeed, to my knowledge, there is no US body charged with such oversight of outgoing venture capital. Investors, like other companies, have a responsibility to respect human rights in their investment decisions. However, this is not well-known or embedded in the venture capital world, particularly.

If a mandatory human rights due diligence requirement for technology and investment companies is not feasible, disclosure requirements or other regulatory measures could assist in helping understand what technology is being transferred and whether US investment is flowing to foreign emerging technology companies implicated in abuses.

Last, we need strong global standards for responsible deployment of emerging technology. Right now, we are in a rules-free free-for-all. In February, I conducted a research trip to Southeast Asia to understand how facial recognition was being used. We found it was deployed widely by both governments and the private sector, but with almost no public information on its uses and virtually no legal framework to protect people from abuses of their privacy or freedom of assembly or expression. I'm pleased that the US recently joined the Global Partnership on AI and has supported the OECD's efforts on responsible AI. We need to move those forward urgently and then ensure they are translated into national law around the world.

My recommendations include:

- Encourage technology companies to adopt the UN Guiding Principles on Business and Human Rights and report publicly on their implementation;
- Continue the use of export controls;

² “EU Commissioner for Justice commits to legislation on mandatory due diligence for companies,” Business & Human Rights Resource Center, April 29, 2020, <https://www.business-humanrights.org/en/eu-commissioner-for-justice-commits-to-legislation-on-mandatory-due-diligence-for-companies>

³ For a full list of companies/sectors that have supported the regulation, please see “List of large business, associations & investors with public statements & endorsements in support of mandatory due diligence regulation”, Business & Human Rights Resource Center, <https://www.business-humanrights.org/en/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation>

⁴ James Kynge and Demetri Sevastopoulo, “US pressure building on investors in China surveillance group,” Financial Times, March 29 2019, <https://www.ft.com/content/36b4cb42-50f3-11e9-b401-8d9ef1626294>

- Support efforts to establish mandatory human rights due diligence for US companies and relevant research institutions;
- Explore mechanisms so that investment of venture capital in sensitive technologies is public or known to a regulator; and
- Support efforts to create global human rights and ethics standards for the development and deployment of emerging technologies.