

Uncompensated Allies: How Contracting Companies and U.S. Government Agencies Failed Third-Country Nationals in Afghanistan

Noah Coburn and Peter Gill¹

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Summary

During the United States' war in Afghanistan, the U.S. military, U.S. Agency for International Development (USAID), and other branches of the government came to rely on contracting companies for various types of essential work, from guarding convoys to cooking meals on bases, building installations, and defusing mines. The majority of laborers for these companies were non-American. Tens of thousands of these workers, oftentimes referred to within the military as third-country nationals (TCNs), came to Afghanistan from elsewhere in Asia, Africa, Eastern Europe and beyond to work for wages that were sometimes only marginally better than those in their home countries. Of the estimated 3,917 contractors killed in Afghanistan and Pakistan between October 2001 and August 2021, approximately half of these were TCNs.²

TCNs are especially vulnerable to an array of employment abuses and have few legal protections. One of the only protections TCNs in Afghanistan between 2001 and 2021 *did* have was the U.S. Defense Base Act (DBA), which calls for the provision of compensation to all workers, no matter their nationality, injured under U.S. contracts, or to their next of kin in the case of death. Under the law, employers are required to buy insurance that provides workers' compensation based on the type of injury and the worker's salary or, in the case of death, an estimate of the earnings that the worker would have earned over their lifetime.

This report looks at the effectiveness of the DBA in protecting TCNs during the U.S.-led war in Afghanistan, and shows that, all too often, the DBA actually failed to provide the protections that it was designed to. Co-authored by an anthropologist and a journalist, this report is based on analysis of datasets obtained through FOIA requests from the U.S. Army and Department of Labor, which show how the law was enforced. It is also based on

¹ Noah Coburn is a Professor of Anthropology at Bennington College and is currently a visiting Fellow at Leuphana University of Lüneburg. Peter Gill is a journalist and writer. From 2014-2021, he was based in Kathmandu, Nepal where he covered politics. He currently writes for the Columbus Dispatch.

² Crawford, N; Lutz, C. (2021, September 1). *Human Cost of Post-9/11 Wars*. Costs of War, Watson Institute, Brown University. <https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll>

interviews with over 200 TCN workers and with several U.S. lawyers specializing in the DBA and related areas, illustrating the trajectories of individual cases. Most interviewees were Nepali workers who worked in Afghanistan, with whom the authors have conducted research for seven years; many of these Nepalis went on to work in Iraq, Syria and other warzones. Their stories are representative of trends involving workers from across the globe.

This research suggests that military contracting companies circumvented the Defense Base Act regulation in numerous ways, preventing workers – who were often uninformed about their rights – from receiving their full compensation amounts. Congress’s Commission on Wartime Contracting in Iraq and Afghanistan drew some attention to the issues related to warzone contracting in 2011, but in the 12 years since, the reforms suggested by the commission have not mitigated the actual dangers to contracted laborers themselves. Meanwhile, the U.S. military and Department of Labor have done little to enforce the regulations, only rarely punishing companies for failing to purchase DBA insurance or for failing to help their employees file claims. Despite wanton disregard for regulations demanding that companies purchase insurance for their workers, which has allowed these companies to pocket tens of millions of dollars, between 2009 and 2021, the Department of Labor fined contracting companies only \$3,250 *total* for failing to report Defense Base Act claims. The negative effects of lax enforcement fell most heavily on TCNs: our data also show that DBA claimants with non-U.S. addresses were much less likely to obtain compensation than those with U.S. addresses.

In conflict zones across the globe, the contracting companies and insurers that participate in these practices profit significantly from the current process that pays little attention to worker protections and have no financial incentive to change their current practices. There is much that the government could do to strengthen regulations and to ensure that they are enforced, to protect both current and future workers in U.S. warzones. Since the U.S. sets the standard for many of the contracting practices used in conflict zones, this could protect a range of workers for other countries’ governments as well.

This is not only a problem of the past: U.S. Central Command [reports](#) that, despite the U.S. troop withdrawal from Afghanistan, it still relies on more than 21,000 contractors in its area of responsibility, more than 9,000 of whom are third-country nationals. It is also an issue that goes far beyond Afghanistan and the Middle East. Reliance on TCNs is a key component of current U.S. military operations around the world.³

The U.S. government’s failure to enforce the DBA represents a tragedy for the victims and their families. For the U.S. public, this failure also disguises some of the true costs of America’s post-9/11 wars by masking the extent of civilian death and injury in the warzones. Exploitative practices from the wars in Afghanistan and Iraq are likely now to continue into an era when U.S. counterterrorism wars are smaller and less visible to the U.S. public, particularly as the U.S. military expands its footprint in places like Africa and

³ Department of Defense. (Quarter 4, 2022). *Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility*. acq.osd.mil/log/LOG_CSD/.CENTCOM_reports.html/FY22_4Q_5A_Oct2022.pdf

Southeast Asia. It is likely that contractors will dominate these future wars. Already, there is evidence that the Russian military has moved to embrace this strategy in Syria and elsewhere. This may reduce the number of deaths of government soldiers, but will make exploitation and other harm to contracted workers all the more likely. Robust mechanisms to protect these workers, as well as the political will to enforce them, are imperative.

Third-Country National (TCN) War Workers

U.S. military and aid operations have relied heavily on contracted labor during the major post-9/11 wars.⁴ In fact, of the \$14 trillion spent since the start of the war in Afghanistan, between a third and a half of all these funds have gone directly to military contracting companies.⁵ Historically, the ratio of United States soldiers to contractors was fairly stable all the way from the Revolutionary War to the Vietnam War, when there was typically one contractor for every hundred military personnel.⁶ Following the first Gulf War and through the post-9/11 wars, this ratio increased rapidly, until there were more contractors than government personnel in the second decade of the war in Afghanistan.⁷

It is impossible to know the exact number of contractors who worked for the U.S. in Afghanistan, because at no point during the war was there an up-to-date database. The reporting system that did exist – called the Synchronized Predeployment and Operational Tracker (SPOT) – was repeatedly found by the Government Accountability Office to be incomplete.⁸ However, it is the best data we have, and even its numbers, which are likely underreported, suggest that Afghanistan marked a new zenith in America’s reliance on contractors.

According to U.S. Central Command, whose data are fed into SPOT, leading up to the American exit in 2021, U.S. troop drawdowns were more rapid than the decrease in

⁴ Crawford, N; Lutz, C. (2021, September 1). *Human Cost of Post-9/11 Wars*. Costs of War, Watson Institute, Brown University. <https://watson.brown.edu/costsofwar/figures/2021/WarDeathToll>; Coburn, N. (2017, August 23). *The Guards, Cooks, and Cleaners of the Afghan War: Migrant Contractors and the Cost of War*. Costs of War, Watson Institute, Brown University. https://watson.brown.edu/costsofwar/files/cow/imce/papers/2017/CoW_Coburn_Migrant%20Contractors_Aug%2023%202017.pdf; Coburn, N. (2018, September 4). *Under Contract: The Invisible Workers of America’s Global War*. Stanford University Press.

⁵ Hartung, William (2022). *Profits of War: Corporate Beneficiaries of the Post-9/11 Pentagon Spending Surge*. Costs of War, Watson Institute, Brown University. https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Profits%20of%20War_Hartung_Costs%20of%20War_Sept%2013%2C%202021.pdf

⁶ Isenberg, D. (2009). *Shadow Force: Private Security Contractors in Iraq*. Praeger Security International. Westport, CT.

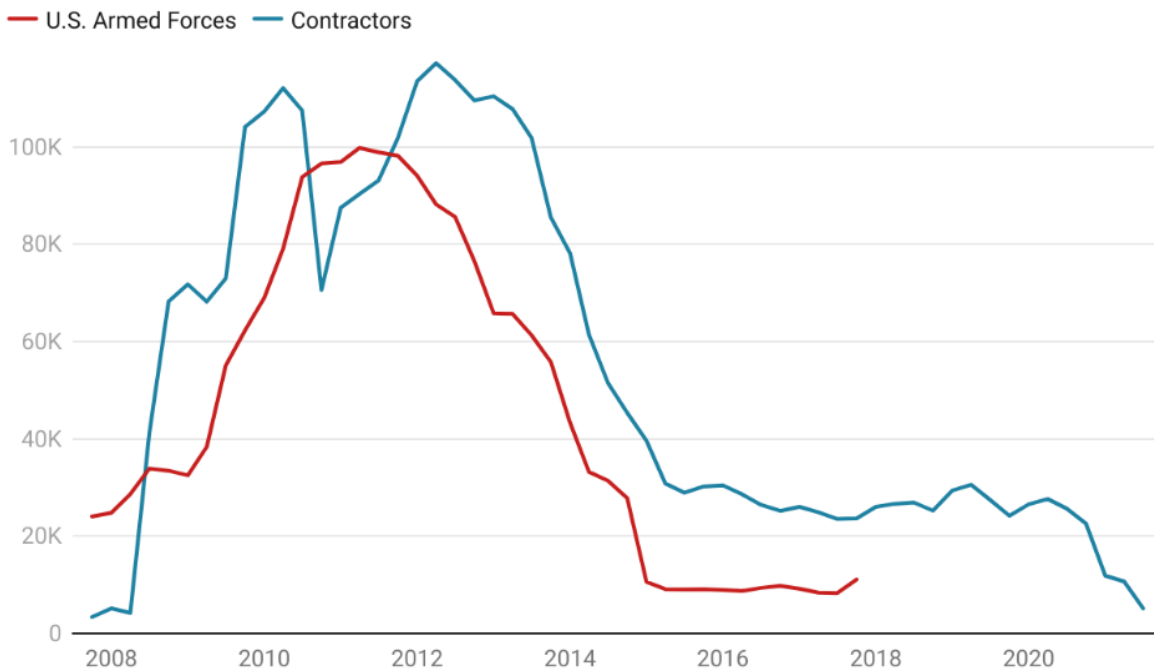
⁷ Coburn, N. (2018, September 4). *Under Contract: The Invisible Workers of America’s Global War*. Stanford University Press.; Vine, D. (2015). *Base Nation: How U.S. Military Bases Abroad Harm America and the World*. First Edition. New York: Metropolitan Books, Henry Holt and Company.

⁸ See, for example: U.S. Government Accountability Office. (2015, February 18). *Contracting Personnel Tracking System Needs Better Plans and Guidance*. <https://www.gao.gov/products/gao-15-250>

contracting, resulting in a ratio of close to three contractors for every one U.S. service member for most of the last five years of the U.S. presence in Afghanistan.⁹

Because many of the contractors doing America’s war work were non-American, the “U.S. presence” in Afghanistan was heavily international. For example, in 2020, approximately 65 percent of contractors there were TCNs or Afghans.¹⁰

Figure 1. U.S. Armed Forces and Department of Defense Contractors in Afghanistan
(Note that this does not include TCN contractors working for other branches of the U.S. government, meaning that the total number of contactors was much higher.)



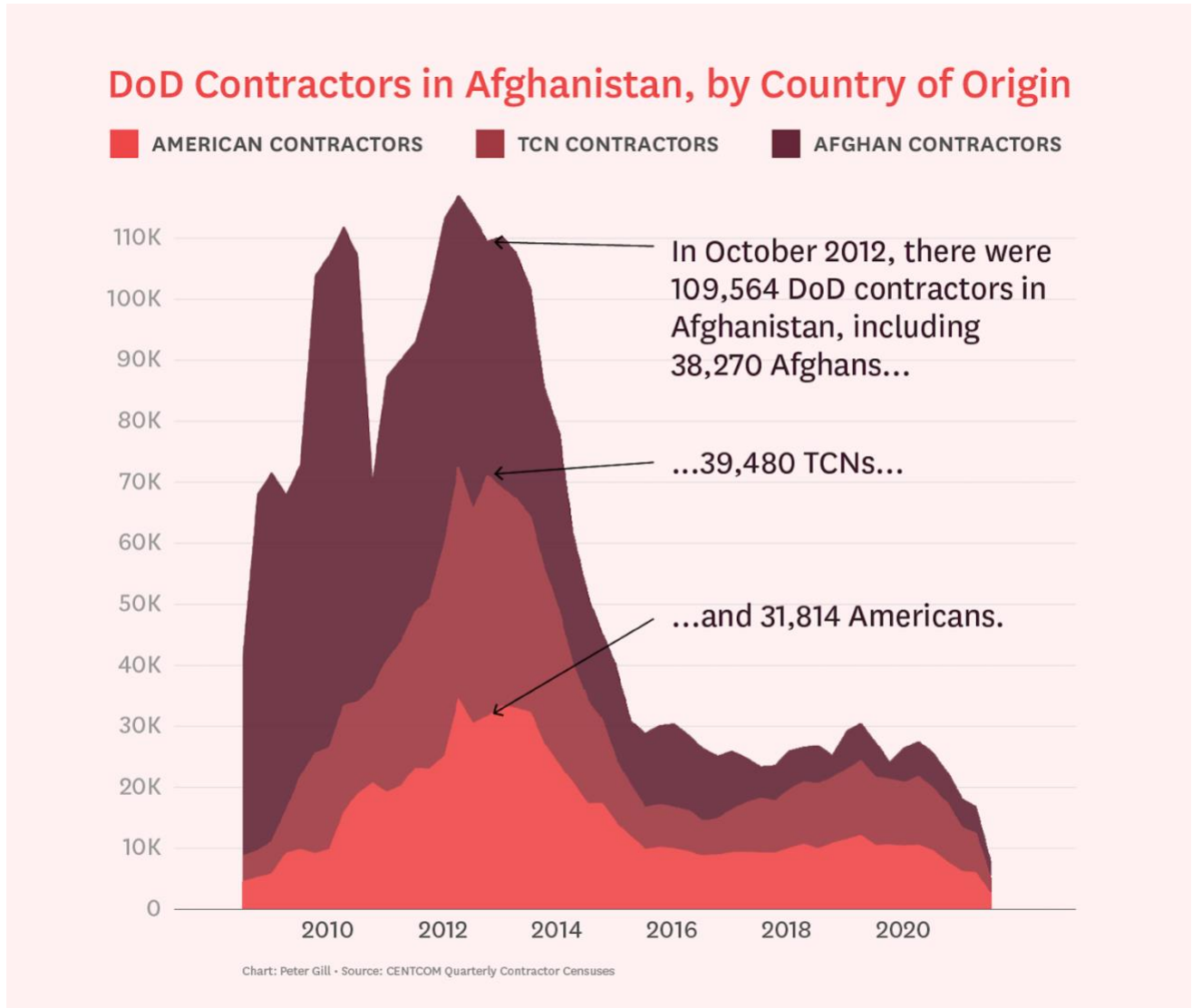
Under President Trump, the US stopped publishing quarterly troop census data for Afghanistan after October 2017.

Chart: Peter Gill • Source: Congressional Research Service • Created with Datawrapper

⁹ Congressional Research Service. (2021, February 22). *Department of Defense Contractor and Troop Levels in Afghanistan and Iraq: 2007-2020*. <https://sgp.fas.org/crs/natsec/R44116.pdf>

¹⁰ Department of Defense. (Quarter 4, 2022). *Contractor Support of U.S. Operations in the USCENTCOM Area of Responsibility*. acq.osd.mil/log/LOG_CSD/.CENTCOM_reports.html/FY22_4Q_5A_Oct2022.pdf

Figure 2. DoD Contractors in Afghanistan, by Country of Origin



The international contractors, however, had few of the same benefits or protections as the soldiers they were replacing. Companies often placed non-U.S. contractors in work that put them at higher risk, for less pay¹¹ and with fewer legal protections than American soldiers were given.

For example, a well-paid Nepali security guard in Afghanistan might have earned \$1,000 a month in 2020, less than a third of the \$3,314 an E-4 U.S. soldier with less than two years of service and a family would have earned, not taking into account the soldier's

¹¹ There is often the assumption that private security contractors take on fewer risks than military personnel, but both interviews with contractors, as well as data on injuries and death to contractors suggest, in reality, these differences are greatly overestimated. For more, see Coburn, N. (2018, September 4). *Under Contract: The Invisible Workers of America's Global War*. Stanford University Press.

medical care and pension benefits.¹² (We have interviewed other Nepalis who earned as little as \$300 per month in Afghanistan.)

At the same time, Nepalis and other TCN workers faced a broad array of additional challenges, both securing positions and then working in the war zone. We interviewed TCN contractors who paid bribes to brokers or directly to employees of international contracting companies to secure jobs or visas that never materialized. While many international companies that directly contract with the U.S. government claim not to take part in the trafficking of workers, they do pay labor firms, often times based in India or the Middle East, who then hire brokers to provide them with laborers. In many instances, companies have business models that only work by relying on exploitative trafficking networks. This means there was an entire industry of manpower firms in Nepal and India that fed migrant workers to Afghanistan with the support of U.S. taxpayer dollars. In the most extreme cases, workers were kidnapped and held in Afghanistan until their families and friends paid ransom.

On the job, contracting companies also regularly put Nepalis and other TCNs at significant risk. At many U.S. and NATO installations, the perimeter had several layers of protection, with local police guarding the outermost ring, TCNs guarding the next ring in, and Americans (including soldiers and contractors) positioned only in the most internal posts. When a car bomb or other attack occurred, local nationals and TCN contractors were far more likely to be killed or injured. A U.S. military veteran who worked for a contracting firm in charge of security for the U.S. embassy in Kabul in the mid-2010s told us that Americans sometimes referred to their Nepali colleagues as “our flak jackets” and “bait” for suicide bombers.

Beyond this, TCNs working on various U.S. subcontracts were subject to a range of forms of exploitation, including having pay withheld and passports confiscated by their companies. Most TCNs were not in a strong bargaining position vis-à-vis their employers because of their financial vulnerability and the fact that they could be detained or imprisoned without the protection of the companies for whom they worked.¹³ Besides

¹² Such a soldier would have collected basic pay (\$2,262 in 2020), basic allowance for sustenance (\$372), hostile fire pay (\$225), hardship duty pay (\$100), family separation allowance (\$250), and per diem for incidental expenses (\$105) while in Afghanistan – all tax-free. See Congressional Research Service. (2020, July 17). *Military Pay: Key Questions and Answers*. <https://sgp.fas.org/crs/natsec/RL33446.pdf> and Department of defense. *2020 Military Basic Pay Table*. Accessed August 8, 2021. <https://militarypay.defense.gov/Portals/3/Documents/ActiveDutyTables/2020%20Military%20Basic%20Pay%20Table.pdf>

¹³ Gill, P. (2020, August 31). ‘Cheap’ Nepali Deaths in US War Zones. Kathmandu Post. <https://kathmandupost.com/national/2020/08/31/cheap-nepali-deaths-in-us-war-zones>; Gill, P. (2020, July 21). *COVID and Contractors: Nepalis in an American War Zone*. The Diplomat. <https://thediplomat.com/2020/07/covid-and-contractors-nepalis-in-an-american-war-zone/>; Coburn, N. (2018, September 4). *Under Contract: The Invisible Workers of America’s Global War*. Stanford University Press; Coburn, N. (2017, August 23). *The Guards, Cooks, and Cleaners of the Afghan War: Migrant Contractors and the Cost of War*. Costs of War, Watson Institute, Brown University. https://watson.brown.edu/costsofwar/files/cow/imce/papers/2017/CoW_Coburn_Migrant%20Contractors

Nepalis, the authors have also interviewed contractors from Afghanistan, Iraq, India, Turkey, Georgia, Sri Lanka and elsewhere who were subject to similar challenges.

This report does not focus on such on-the-job abuses, which have been discussed extensively elsewhere,¹⁴ but rather looks at the U.S. governmental regulation system meant to provide these workers with certain protections, in particular, the Defense Base Act, or DBA. While U.S. government contractors in war zones are able to operate free from the constraints of many U.S. labor statutes, such as minimum wage laws and prohibitions against discrimination, one law they must follow is the DBA.

Previous reporting on the DBA has often focused on cases of insurance companies either ignoring or stonewalling clients who submitted claims. In 2009, *Pro Publica* analyzed tens of thousands of contractors' claims and found that insurance carriers routinely and wantonly denied legitimate claims made by survivors.¹⁵ Similarly, the U.S. media has documented cases of insurance companies stonewalling local translators and Ugandans working in Iraq.¹⁶

Our review of cases of Nepali workers in Afghanistan, however, finds that many TCNs do not even get to the stage where they can file an insurance claim. This occurs because they are unaware of their rights, their employers do not purchase the required insurance, and/or their employers do not support their victimized employees in filing claims. Of the over 200 TCN contractors, the majority of them Nepali, whom we interviewed, we found 12 cases of contractors who were injured or killed while working under U.S. government subcontracts in Afghanistan which were not properly compensated. In two additional cases, we interviewed Nepalis who received DBA compensation for injuries in Iraq only after filing legal challenges with the help of American lawyers.¹⁷ The pattern of these 14 cases suggests that companies deliberately removed injured TCNs from Afghanistan to Nepal as quickly as possible and denied them paperwork concerning their injury and termination - although they often provided smaller cash payments. There is no logical rationale for these practices other than the companies' hopes that this would deter victims from seeking outside legal assistance.

Aug%2023%202017.pdf; Coburn, N.; Gill, P. (2021, August 5). *Searching for the Next War: What Happens when Contractors Leave Afghanistan?* The Diplomat. <https://thediplomat.com/2021/08/searching-for-the-next-war-what-happens-when-contractors-leave-afghanistan/>

¹⁴ See Coburn, N. (2017, August 23). *The Guards, Cooks, and Cleaners of the Afghan War: Migrant Contractors and the Cost of War*. Costs of War, Watson Institute, Brown University.; Coburn, N. (2018). *Under Contract: The Invisible Workers of America's Global War*. Stanford University Press.; Coburn, N. (2016). *Losing Afghanistan: An Obituary for the Intervention*. Stanford University Press; Simpson, C. (2018, April 17). *The Girl from Kathmandu: Twelve Dead Men and a Woman's Quest for Justice*. Harper.; Miller, T. Christian. *Disposable Army*. Pro Publica. <https://www.propublica.org/series/disposable-army>.

¹⁵ Miller, T. Christian. *Disposable Army*. Pro Publica. <https://www.propublica.org/series/disposable-army>

¹⁶ Lawrence, J. P. (2016, February 22). *Claim: Denied: Wounded in Iraq, Ugandans Fight for Compensation From America*. The Intercept. <https://theintercept.com/2016/02/22/wounded-in-iraq-ugandan-contractors-fight-for-compensation-in-america/>

¹⁷ We did find another approximately 10 cases of injured contractors, whose cases we could not fully confirm where their injuries occurred or who they worked for.

The deep flaws in the DBA compensation system include, first, that private insurance companies often unreasonably deny claims once filed. Second, contracting companies often deliberately ignore the DBA when it comes to their TCN employees. Meanwhile, the U.S. military and Department of Labor do little to enforce the regulations that do exist. Together, this means that for many TCNs, their own source of legal defense, the DBA, offers no real protection at all.

The Defense Base Act: Protecting War Laborers Outside the U.S.

The Defense Base Act was passed during World War II and was originally meant to protect U.S. civilians working on U.S. bases in Europe; in 1958 coverage was then expanded to non-citizens. The amount of compensation depends upon the type of injury, the salary of the worker and, in the case of death, an estimate of the earnings that the worker would have earned over their lifetime. For a worker, even from a poorer country, this can sometimes mean a required insurance payment of over a million dollars, particularly for a younger worker.

Companies contracting with the U.S. government are required to obtain DBA insurance for each worker before they begin working, regardless of nationality. The U.S. contracting authority – whether it be the military, USAID, or the State Department – is supposed to include a line item for workers’ DBA insurance in each of its contracts; any subcontractors are also required to purchase insurance meeting the DBA’s standards. A handful of multinational insurance companies, such as AIG and CNA, are authorized to underwrite DBA insurance.

If a worker is killed or injured, the employer is supposed to report the incident to the insurance company and the Department of Labor (DoL). The insurance company then pays for medical expenses, and compensates for disabilities and, potentially, death. The DoL’s Office of Worker Compensation Programs – specifically, its New York District Office – oversees the process. Copies of claims must be submitted to the DoL as well as the insurance company, and the DoL is charged with tracking the progress of payments and adjudicating any disputes between the worker, the insurance carrier, and/or the employer. If disputes cannot be amicably resolved, then claimants can seek a ruling from a DoL special court. Likewise, the DoL must sign off on any out-of-court settlements negotiated between a claimant, insurance carrier and/or employer. However, we found that too often, the process does not work as designed.

The Case of Yam Bahadur

In early 2020, we met Goma, a single mother in Nepal, whose husband, Yam Bahadur, died in 2012 in Afghanistan, where he had arrived just months prior. To make the journey and secure his job, Goma told us that they borrowed 3 lakh rupees (approximately \$4000 in today’s dollars) to pay a labor broker. In exchange, Yam secured work at an Afghan-registered security company guarding a private compound on the outskirts of

Kabul. On May 2, 2012, Yam Bahadur was killed in a suicide bomb attack at the compound.¹⁸ The security company repatriated Yam Bahadur's body and continued to pay Yam Bahadur's salary (\$1,000 per month) to Goma for four years. Goma told us that she accepted the payments unaware that she might be eligible for any greater amount.

When we investigated further, it became apparent that, while he was working on the base of a private company, Yam Bahadur had died while protecting American soldiers. According to a half-dozen of his former colleagues and corroborated by FOIA-requested U.S. documents, a U.S. Army Task Force rented office and residential space for 140 personnel at the compound where Yam Bahadur worked. A rental contract for the space included a line-item stipulating that the employer would purchase DBA insurance for security personnel like Yam Bahadur. It is unclear whether the employer had in fact ever purchased DBA insurance covering Yam Bahadur, but it is clear that the amount that Goma received – four years' of her husband's salary – is a fraction of what would be required under the DBA.

The DBA stipulates that widows and widowers are entitled to half of their deceased spouse's salary for the rest of their lives – which can be paid in regular installments or commuted to a single lump-sum, calculated using a legal formula that considers the recipient's age, life expectancy and current interest rate. In Goma's case, the commuted lump-sum would likely be over two-hundred thousand dollars, instead of the \$48,000 she received over the course of four years. (One lawyer estimated it would be between \$235,000 and \$275,000, though it is difficult to predict precisely, since it would depend on life expectancy and when the payment was being made.)

Goma eventually got in touch with a researcher studying Nepali migrant labor, who put her in touch with U.S. human rights lawyers. She is now represented by the U.S.-based law firm Handley, Farah & Anderson, and is awaiting a hearing in a Department of Labor special court. In most other cases we found, however, injured contractors and their families did not know or did not have the means to contact international legal representation in the United States.

Getting Around the System

A major problem with the Defense Base Act system is that it relies entirely on the company to self-report incidents affecting employees. As contracting expert David Isenberg points out: "If nobody reports the incident to the Department of Labor and the family does not file a claim, [the U.S. government] has no way of knowing what happened. In short, the system is totally based on the transparency and honesty of the contracting firms to do what

¹⁸ Reports of the attack made it into the international media, in part because the attack occurred just hours after President Obama's visit to Kabul. See: CBS News. (2012, May 2). *7 killed in Kabul in bomb, grenade attack on heels of Obama's Afghanistan visit*. <https://www.cbsnews.com/news/7-killed-in-kabul-in-bomb-grenade-attack-on-heels-of-obamas-afghanistan-visit/>

the law says it must do.”¹⁹ What this means is that it is also difficult to analyze cases that were not filed or not filed properly.

Ideally, after a worker is injured, the employer, who should already have insurance, then files a report concerning the incident. If the insurance company accepts the claim, the worker may have the choice to receive a commuted payment or a series of recurring payments. However, the cases we reviewed, and our interviews with experienced attorneys, revealed that there are several steps where companies can prevent these payments from being made.

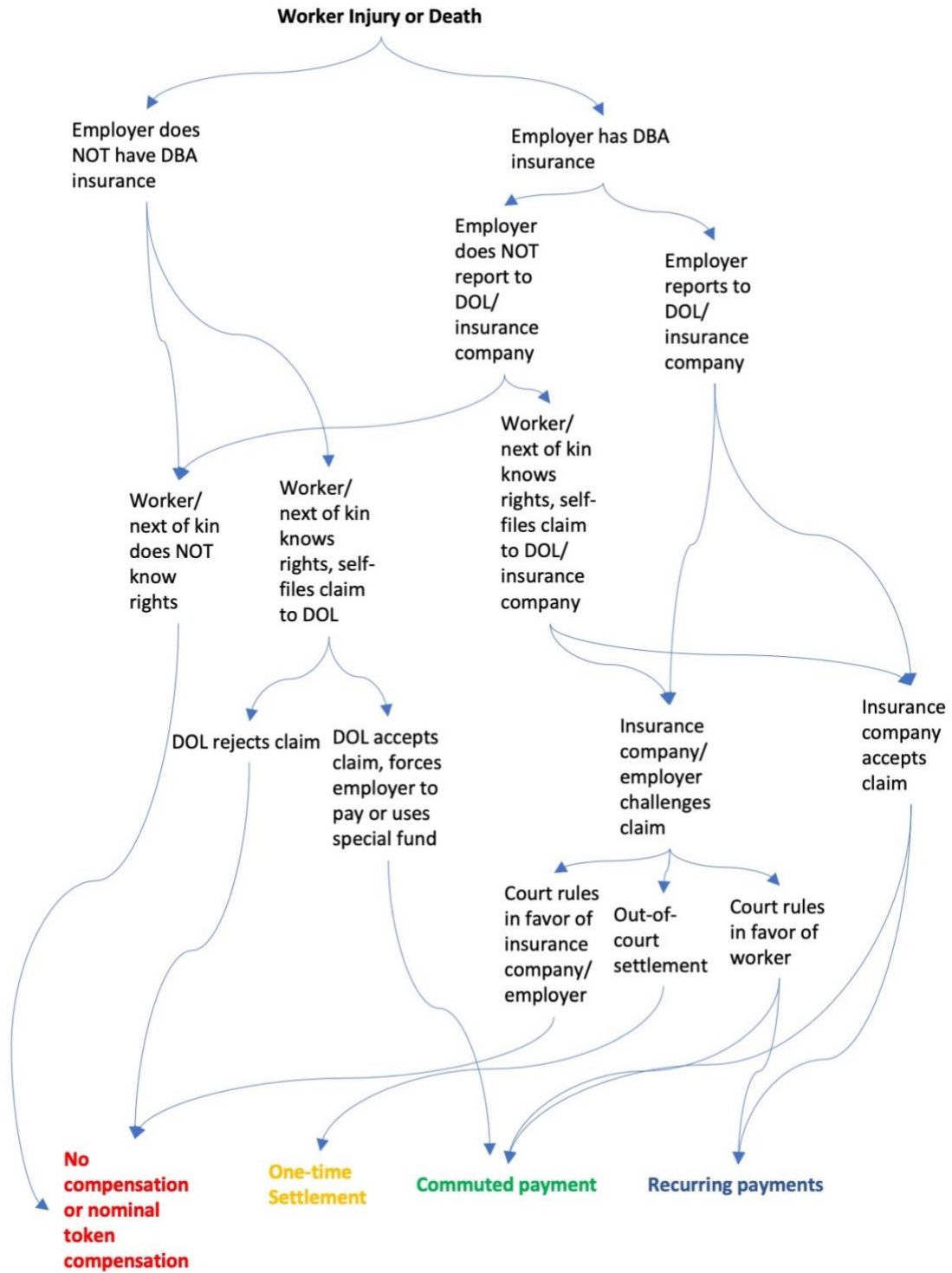
In most cases that we reviewed, workers told us that they never received documentation showing their employer had reported their case to the DoL. If the employer failed to report a case, and the worker was unaware of their rights, the worker was unlikely to be compensated (more on this below). However, much less frequently, if a worker *was* aware of their rights, he or she could theoretically file a claim with the DoL on their own, and thereby get insurance compensation. Or, if the employer turned out to be uninsured, the worker’s claim could force the employer to pay compensation out of pocket, plus a fine. Or, in cases where the employer could not be found, the DoL would pay compensation through a special fund. (Contractors folded with surprising regularity during the war in Afghanistan, often as a means of escaping claims for compensation or other financial liabilities, meaning finding a worker’s former employer is not always easy.²⁰ One worker we interviewed, who was injured in Iraq, was compensated this way.)

Sometimes, a worker’s claim might be weakened by a lack of documentation pertaining to their injury or their employment; such workers might choose to accept a one-time out-of-court settlement with the insurer or employer for a lesser amount than the DBA would require. Or, the worker might push on with their legal case only to lose in court. These various scenarios are all depicted in the figure below.

¹⁹ Isenberg, D. (2008, December 30). *Shadow Force: Private Security Contractors in Iraq*. Praeger Security International.

²⁰ See, for example, Fielding-Smith, A. and Black, C. (2019, January 29). *A Security Company Cashed in on America’s Wars – and then Disappeared*. The Atlantic.
<https://www.theatlantic.com/international/archive/2019/01/afghanistan-civilian-private-security/581263/>

Figure 3. Worker Injury and Death Incident Outcomes Chart



We did find three cases where the employer failed to report an incident but the worker nonetheless was able to get compensation. However, those cases all involved Nepali workers who were lucky enough to get a U.S.-based lawyer to take on their case. There is a small network of these lawyers, most notably Matthew Handley of Handley, Farah & Anderson, who was previously in the Peace Corps in Nepal and therefore had a personal interest in the country. Beyond these highly personal connections, however, it is extremely difficult for Nepalis, particularly in rural areas, to locate legal representation. And for lawyers in the U.S., it is similarly difficult to locate TCNs who might need representation after being injured since there is no public record of many of these injuries.

What was most striking, however, were the reports from workers who had received *some* compensation, but were not sure that a DBA claim had been filed on their behalf. These cases followed a very similar pattern: For instance, a man named Bhim had worked in Afghanistan from 2009 until he was injured in a blast at Camp Pinnacle, a private security base in Kabul, during a Taliban attack in 2012. After the injury, he was not treated in Afghanistan at the U.S. military base that treated his American colleagues, but was instead flown first to Delhi and then Kathmandu where he had a metal plate put into his hip. These hospital costs were covered by his company and he continued to receive a very small periodic payment, delivered to him through a travel agent in Kathmandu. These payments are around 20% of what he is entitled to through the DBA. Now, disabled and unable to work, he relies on this payment to support his family.

Bhim, like many of the contractors we interviewed, had saved virtually every piece of paper and document that his employer had provided to him. We sat together and went through several binders of documents. It was remarkable that there was almost no documentation regarding his injury. The company that had so meticulously documented every other step in his employment, including the issuing of his uniform and various one day training courses, had somehow not acknowledged in any way in a written document the injury that had occurred to him. Furthermore, the payments were not from the company itself, but, suspiciously, through a travel agent. It was likely that the company was trying to avoid paying the full amount of compensation that they owed and were attempting to leave no paper trail in the event there was legal action. If this was the case, then their strategy was effective; while Bhim was deeply disappointed by his current situation and aware that he may not be receiving the full amount owed to him, he was concerned that if he complained or took legal action, the payments on which he and his family relied would simply stop – and since he was unable to work, this was simply a risk he could not take.

The U.S. Government's Failure to Enforce the Defense Base Act

Contracting companies claim that such cases are outliers, but there is significant evidence, beyond the dozen cases we collected, to the contrary, and companies continue to profit significantly from the current system which does almost nothing to enforce worker protections.

A Special Inspector General for Afghanistan Reconstruction (SIGAR) audit report from 2011 found that U.S. subcontractors for the Army Corps of Engineers in Afghanistan routinely failed to purchase DBA insurance for their employees. In some cases, the companies purchased DBA insurance for the initial year of their contracts, but then let it lapse while continuing to receive money in their contracts for continued insurance coverage. SIGAR estimated that the U.S. Army Corps of Engineers alone paid companies \$58.5 million between 2005-2011 that was supposed to go towards insurance premiums for their workers, but which was instead pocketed. In addition, SIGAR found that army contracting officers regularly failed to practice the oversight required to enforce the DBA law.²¹ Often, work commenced without the U.S. Army Corps of Engineers reviewing the DBA invoices of contractors.

Pro Publica's series of reports in 2009-2010, mentioned earlier, highlighted how DBA insurance carriers regularly and wantonly disputed legitimate claims made by contractors.²² Analyzing the Department of Labor's database of approximately 31,000 claims, it found that insurance companies had earned "hundreds of millions in profits" on "premiums that were unreasonably high and excessive."²³ *Pro Publica* also discussed challenges in supporting non-Americans and non-English speakers to file claims, noting that the Department of Labor had no staff in Iraq or Afghanistan to help workers file claims, despite the thousands of workers eligible for them.²⁴

This attention, in part, led to the Commission on Wartime Contracting in Iraq and Afghanistan, set up in 2008, and a subsequent series of Congressional hearings in 2011.²⁵ During these hearings, members of Congress pushed some offices, such as the Departments of Labor and Defense, to be more transparent with the contracting data they collect, including data that would have helped the enforcement of the Defense Base Act. The Department of Labor announced it would expedite informal meetings to settle disputes between claimants and carriers, and that it would publish data on how quickly insurers pay out claims, in a bid to encourage better behavior.

However, data we obtained through FOIA requests suggest that the Department of Labor and the Army only rarely punished companies for failing to purchase DBA insurance or for failing to help their employees file claims, even after the congressional scrutiny in 2011.

²¹ Special Inspector General for Afghanistan Reconstruction (SIGAR). (2011, July 28). *Weaknesses in the USACE Defense Base Act Insurance Program Led to as Much as \$58.5 Million in Refunds Not Returned to the U.S. Government and Other Problems*. <https://www.sigarmil/pdf/audits/2011-07-28audit-11-15.pdf>

²² Miller, T. Christian. *Disposable Army*. Pro Publica. <https://www.propublica.org/series/disposable-army>

²³ Currier, C. (2012, June 6). *Bill Introduced to Reform Workers' Comp for Military Contractors*. Pro Publica. <https://www.propublica.org/article/bill-introduced-to-reform-workers-comp-for-military-contractors>

²⁴ Miller, T. Christian. (2009, June 21). *Forgotten Warriors*. Los Angeles Times. <https://www.latimes.com/archives/la-xpm-2009-jun-21-fg-iraq-contractors21-story.html>

²⁵ Commission on Wartime Contracting in Iraq and Afghanistan. (2011). *Transforming Wartime Contracting: Controlling Costs, Reducing Risks*. Arlington, VA. <https://www.hsdl.org/?view&did=685405>

Over twelve years between 2009 and 2021, the Department of Labor fined contracting companies performing work in Afghanistan only six times for failing to report Defense Base Act claims for their employees. The total amount of these fines amounted to just \$3,250. The details are in the table below.

Figure 4. Fines Issued by the Department of Labor to Contracting Companies Performing Work in Afghanistan for Failure to Purchase DBA Insurance and/or Report Claims, 2009-2021²⁶

Date	Infraction	Fine
May 23, 2016	Failure to timely submit LS-202	\$500
June 2, 2016	Failure to timely submit LS-202	\$250
April 7, 2017	Failure to timely submit LS-202	\$500
Nov. 28, 2017	Failure to timely submit LS-202	\$500
April 2, 2019	Failure to timely submit LS-202	\$1,000
Feb. 27, 2020	Failure to timely submit LS-202	\$500

For firms that had tens of millions of dollars in contracts with the U.S. government, it is difficult to fathom how fines of a few hundred or even one-thousand dollars could deter bad behavior. What is more, the Department of Labor was unable to name a single instance in which it had recommended that any contracting agency debar a company because of its failure to report cases according to the Defense Base Act.

Likewise, government contracting agencies had a duty to ensure that their contracting companies were purchasing DBA insurance as required by law. The Army

²⁶ The data come from documents produced by the Department of Labor in response to a FOIA request, asking the agency to “identify or produce documents sufficient to indicate the number of times between January 1, 2009 and the present [April 14, 2021] that the Department of Labor (1) imposed monetary fine(s) against employers performing work in Afghanistan for failing to report injuries of workers to the Department of Labor in accordance with the Defense Base Act OR (2) debarred or recommended debarment against employers performing work in Afghanistan for failing to report injuries of workers to the Department of Labor in accordance with the Defense Base Act. For each case, please provide official documentation.”

Contracting Command-Afghanistan was responsible for the large majority of military contracts in the country. In response to our FOIA requests, the office was able to show that it terminated just 4 contracts due to contractor failure to purchase DBA insurance between 2009 and 2020. All of the terminations occurred in 2014 or 2015; none apparently occurred from 2009-2013 or between 2016-2020. The government recouped approximately \$290,000 from the terminated contracts, according to data from the online Federal Procurement Data System.²⁷ This was only a tiny fraction of the command's total contract portfolio, which was typically tens of billions of dollars at any given time (for example, it was approximately \$20 billion in January 2020).²⁸

Furthermore, a 2020 audit by the Defense Department Inspector General found that the Army Contracting Command-Afghanistan had poor systems in place to address contactors' nonperformance, which would include failure to purchase DBA insurance as stipulated in their contracts. The inspector general found that the agency "deployed contracting officials to Afghanistan with limited knowledge and experience of contingency contracting requirements and tasked them with using electronic recordkeeping and contract management systems that were not reliably accessible...[it] did not have reasonable assurance that it successfully mitigated contracting risks, such as nonperformance, improper payments, and mismanagement of Government property."²⁹

²⁷ Data on all government contracts and actions can be viewed at <https://www.fpds.gov>

²⁸ Inspector General of the U.S. Department of Defense. (2020, June 18). *Audit of Army Contracting Command-Afghanistan's Award and Administration of Contracts*. <https://www.dodig.mil/reports.html/Article/2227316/audit-of-army-contracting-commandafghanistans-award-and-administration-of-contr/>

²⁹ Ibid.

Figure 5. Contracts Terminated by the Army Contracting Command-Afghanistan for Failure to Purchase DBA Insurance, 2009-2020³⁰

Contract	Contractor	Date of Termination	Amount Recouped after Termination
W91B4N-14-P-2029 "Kunar Cultural Advisor"	Hazrat Usman	17-May-14	\$7,820
W91B4N-14-P-2048 "FOB Wright Laborers"	Noor Shinwari Logistics	24-May-14	\$7,500
W91B4N-14-P-2049 "Fuel and Water Services FOB Wright"	Mohammad Hamid Logistics Services	13-Jul-14	No amount listed on fpds.gov
W56SGK-14-C-0011 ""Potable Water Delivery for the Afghan Air Force at North KAIA"	Zeta Logistic Services Co.	29-Sep-15	\$275,565

The data we obtained on fines and contract terminations suggest that the Departments of Defense and Labor did not do enough to enforce adherence to the DBA, despite the recommendations of the contracting commission and congressional hearings in 2009-10, and the warnings from watchdog agencies like SIGAR and the Defense Department Inspector General. It is likely that companies such as Yam Bahadur’s employer continued to feel unrestricted by the law, and were therefore more likely to flout its provisions.

Because of this casual enforcement of the law, and because non-American workers were often unaware of their rights under the DBA, we hypothesized that DoL data would show that TCNs and host-country nationals filed DBA claims from Afghanistan at lower rates than U.S. citizens. To test this hypothesis, we asked the DoL for data on the nationality of DBA claimants. The Department of Labor did not provide us all of the data that we sought, but we were nonetheless able to obtain enough data to draw some qualified conclusions.

It is important to note that Department of Labor collects data on claimants’ nationalities in several important documents – including in form LS-202, the employer’s first report of injury, which must be submitted to the DoL’s Office of Workers’ Compensation Programs within 10 days of any incident causing employee injury, and in form LS-203, which is the form employees can use to self-report claims if their employer fails to do so. However, on the DoL website, the agency claims not to store nationality data

³⁰ The data comes from documents produced by the Army Contracting Command in response to two separate FOIA requests, one for the period Jan. 1, 2009- Sep. 23, 2015 and another for the period Sep. 24, 2015- Sep. 24, 2020, asking the agency “to produce documents sufficient to show the number of times [that it] carried out or recommended punitive action against a contractor or subcontractor performing work in Afghanistan for (1) failing to purchase required DBA Insurance for all employees or (2) failing to report injury cases under the DBA.”

in any of its databases.³¹ When we specifically asked for that data in a FOIA request, the DoL said that fulfilling that request would be impossible, reiterating that it does not keep nationality data. To us, it appears that the DoL is collecting data on claimants' nationality that it is simply unwilling to share – perhaps because it would show that there are disparities between the filing rates for TCNs, host country nationals, and American contractors.

However, we were able to get around this lack of data by using a proxy for nationality – the address of claimants.³² While the DoL was unwilling to provide nationality data to us, in response to a FOIA request they did provide us the number of DBA claims from Afghanistan by nation of the address on record for the claimants, for the time period 2002 to 2020.³³

Overall, most DBA claimants had U.S. addresses, while people with addresses in Afghanistan and third-countries filed DBA claims at much lower rates. On average for the period 2008-2020, there were 15.9 death and injury claims from U.S. addresses per 1,000 American DoD contractor-quarters in Afghanistan, compared to 7.9 from third-country addresses per 1,000 TCN contractor-quarters, and just 2.1 claims from Afghan addresses,

³¹ See the archived version of the DoL website:

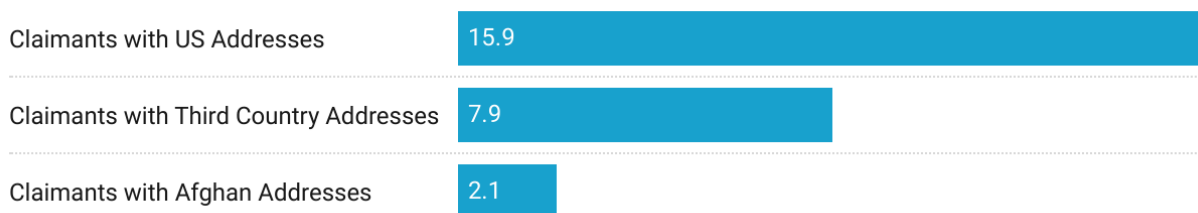
<https://web.archive.org/web/20211227154045/https://www.dol.gov/agencies/owcp/dlhwc/lisaboutdbareports>

³² There are some important caveats for this data. The DOL has told us that home addresses may not be a reliable proxy for a worker's nationality, because residence does not always correspond to citizenship, and because in some cases, workers may use a company address. However, we discussed this issue with three attorneys who specialize in the DBA, who have collectively represented hundreds of claimants, and they said that the claimant's address is probably a fairly good proxy for their nationality. One attorney noted that when employers file claims on behalf of employees, they actually have good reason to report TCN claimants' addresses as their actual home countries. This is because compensation for TCNs' death claims is commuted based on how long they would have been expected to live, which is based on life expectancy in their home country. Because life expectancy in a country like Nepal (71 years in 2020, according to the World Bank) is lower than life expectancy in a country like the United Arab Emirates (78 years), a contracting company based in the UAE (or, more likely, its insurance carrier) would be liable for a smaller payment if they correctly reported the worker's home country as Nepal rather than using a company address in the UAE.

³³ A second caveat has to do with the form in which the DoL provided the data to us. The DoL provided claims per country for each year, but redacted some data about the claims using what it calls the "Rule of 7." The Rule, the DoL claims, is to protect claimants' privacy. It seemed completely unnecessary to apply the rule to this dataset, which contains no personal identifying information, but the DOL insisted on applying it. In short, this meant that the DoL omitted any datapoint with a value less than 7. For example, in 2014, the dataset included 11 serious injury claims (designated "lost time four days or more") in Afghanistan from Nepal addresses, but for the death claims from Nepal addresses that year, there was a blank. The blank indicates that there were between 1 and 6 death claims from Nepal for that year. (If there had been no death claims from Nepal addresses that year, no data line-item would have appeared in the dataset at all. If there had been 7 or more, the actual number would have been shown.) Rather than not count any of the blanks, which would have skewed the dataset by under-representing many third-countries from which relatively few claims were filed in any given year, we replaced all blanks in the dataset with the number 3.5, which is the average of 1, 2, 3, 4, 5, and 6. This was an imperfect method of correcting for the DoL's Rule of 7. The adjustment did not significantly affect the filing rates from American and Afghan addresses, but it did affect the filing rate for third-country addresses. Without making the blanks→3.5 adjustment, there were 6.1 DBA claims from third-country addresses per 1,000 TCN contractor-quarters, compared to 7.9 after the adjustment was made.

per 1,000 Afghan contractor-quarters. (We calculated contractor-quarters based on CENTCOM reports; the metric is analogous to the concept of “man-hours.”) Thus, it appears that TCN and Afghan contractors filed claims under the DBA at rates far lower than American contractors, despite the fact that most TCNs were in jobs that put them at higher risk.

Figure 6. DBA Death and Injury Claims per 1,000 Contractor-Quarters, 2008-2020



Only deaths and injuries that resulted in four days' lost time or more were counted. Blank data cells were converted to the value of 3.5, to account for the DOL's "Rule of 7."

Chart: Peter Gill • Source: Department of Labor, by FOIA Request • Created with Datawrapper

When we examined the data longitudinally, we noticed a rising trend in the rate of claims filed from third-country addresses since 2015, but it is noteworthy that the vast majority of these claims came from claimants with addresses in Western Europe, Eastern Europe, Oceania, or Canada – not poorer TCN nations such as Nepal, India, or the Philippines which commonly sent workers to the Afghanistan and Iraq warzones.

The Future of War and Protections for TCNs

U.S. military and political leadership has demonstrated a strong preference for relying on contractors over U.S. military personnel, given the high political costs of dead U.S. soldiers and the lobbying power of the contracting corporations in Washington, DC. Rates of reliance on contracted labor in conflict zones have increased under each of the last four presidents – two Democrats and two Republicans. The next wars the U.S. will be involved in are likely to be highly contracted as well.³⁴

Congress and other U.S. authorities' lack of interest in more actively addressing some of the failings described in this paper, along with the routine underenforcement of existing regulations, demonstrate that the U.S. government does not prioritize oversight of warzone contracting. At the same time, these violent places are exactly where workers are most likely to be killed, injured, or exploited more generally.

This was apparent in the final days of the U.S. military presence in Afghanistan when tens of thousands of Afghans who had worked for the U.S. government rushed to the

³⁴ For similar arguments, see McFate, S. (2019, January 22). *The New Rules of War: Victory in the Age of Durable Disorder*. William Morrow Publishing.

airport to seek evacuation. Part of the failings of the evacuation was the ineffective nature of the Special Immigrant Visa process,³⁵ which granted visas to specific Afghan contractors, but the chaotic nature of the evacuation demonstrated further how the lack of oversight and protections for contractors can create long-term problems.

At no point during the war in Afghanistan was there an up-to-date database of all contracting personnel working for the U.S.³⁶ This means that during the evacuation process, the U.S. government did not even know how many Afghans were eligible to be evacuated.³⁷ In some cases, as companies pulled out of Afghanistan alongside U.S. troops, they left workers from Nepal and elsewhere behind.³⁸ Many of the workers we were in contact with were eventually able to leave the country, but sometimes weeks after their Western colleagues.

The lack of a database and other forms of oversight also suggest that even with the U.S. involvement in the war in Afghanistan now officially over, future wars are likely to reproduce similarly exploitive trends. It will be easier politically for U.S. presidents to send teams of military contractors into potentially dangerous situations than to rely on U.S. troops. Simultaneously, it will be easier to exploit these workers.

Beyond this, the model that the U.S. has set up to outsource the labor of war to TCNs has been taken up by both allies and enemies of the United States. Increasingly, wealthy countries in the Gulf are relying on TCNs to build their standing forces. As we have interviewed Nepali contractors leaving Afghanistan, we find they are increasingly looking for work in places like Syria, oil rich parts of Africa, and as parts of private security teams and militias elsewhere around the world. Russia has similarly relied more and more on private contractors in foreign warzones. The U.S. has set a dangerous precedent of relying on foreign military contractors while providing them few protections, and other countries are now doing the same. If there is not more agreement around international norms for protecting these workers, we are likely to see more and more egregious exploitation in the future.

The DoL and other branches of government involved in oversight of U.S. contracting in warzones need to be better resourced to conduct the oversight they are tasked with and should be held accountable when they fail to undertake such oversight. Moreover, if there is not more pressure by advocacy groups, the media, and the public, it is unlikely that the

³⁵ Coburn, N. (2021, April 5). *The Costs of Working with the Americans in Afghanistan: The United States' Broken Special Immigrant Visa Process*. Costs of War, Watson Institute, Brown University. https://watson.brown.edu/costsofwar/files/cow/imce/papers/2021/Costs%20of%20Working%20with%20Americans_Coburn_Costs%20of%20War.pdf

³⁶ The database that does exist, the SPOT database, is notoriously poorly maintained. See, for example: U.S. Government Accountability Office. (2015, February 18). *Contracting Personnel Tracking System Needs Better Plans and Guidance*. <https://www.gao.gov/products/gao-15-250>

³⁷ Coburn, N. (2017, August 23). *The Guards, Cooks, and Cleaners of the Afghan War: Migrant Contractors and the Cost of War*. Costs of War, Watson Institute, Brown University.

³⁸ Sharma, B. (2021, August 23). *They Were Protectors in Afghanistan. Now They Need Help*. The New York Times. <https://www.nytimes.com/2021/08/23/world/asia/nepal-afghanistan-gurkha.html>

U.S. government will take the lead in regulating these companies, even as they spend U.S. taxpayer dollars to exploit foreign workers to fight their wars.

As it is, the suffering caused by these wars will only deepen, and more widows like Goma will continue to bear the costs of her husband's sacrifice to protect U.S. soldiers.