

Kate Clark

The *Layha*

Calling the Taleban to Account

Executive Summary

A year has passed since the Taleban issued the latest version of their Code of Conduct or *Layha*. The Code regulates how Taleban fighters should wage war and how they should deal with each other, with the enemy, and with the rest of the population. The *Layha* is a rule book for the Taleban, but it is also an aspirational document, projecting an image of an Islamic and rule-bound jihad and a quasi-state.

This report by the Afghanistan Analysts Network (AAN) analyses the *Layhas* adopted by the Taleban in 2006, 2009 and 2010 with a focus on the four main themes of all three codes: (1) dealing with those who surrender; (2) prisoners, crime and punishment; (3) dealing with the local population and (4) organisational structure and hierarchy. This paper examines the *Layha*, both as a means of analysing the Taleban itself and the movement's changing concerns, and as a practical document, asking how useful this rule book could be for helping to reduce suffering in the conflict.

The first version of the *Layha* emerged in 2006 as an attempt to consolidate the movement, inspire fighters and curb their excesses. It seems, in particular, to have been a response to the fact that the Taleban's self-image – as a movement bringing security and justice – was being undermined by corruption and abuses. The Code reflects the Taleban's strategic dilemma as an insurgent movement that seeks to intimidate the population enough to deter 'collaboration' with the Afghan government and foreign forces, but not be so brutal as to alienate local people or deter them from switching sides.

Updates of the Code in 2009 and 2010 illustrate the shifting dynamics of the movement and the leadership's fears of fragmentation, their concerns about the uncontrolled killing of suspected spies, the exploitation of the 'jihad' for criminal or material gain, and the need to attract the 'opposition' with the Taleban's own offer of amnesty and reintegration. Each new version of the Code has been longer, more detailed and more polished, expanding as the territory coming under the control of the Taleban has increased and presenting ever more

sophisticated hierarchies and quasi-state structures.

Some articles in the *Layha* amount to orders to violate both international and Afghan law; for example kidnapping is permitted, so long as it is not for ransom. However, the Code also has a number of articles, which if applied could reduce civilian suffering in the conflict. For example, the Code threatens punishment against fighters and officials who do not 'with all their power' take care of the 'lives and belongings of the common people' and it includes attempts at judicial safeguards, such as bans on torture and forced confessions. There are also numerous attempts to stamp out what could be called 'jihadi entrepreneurship', using the fight as cover to exploit people and make money.

Obviously, large gaps exist between rules and action and the articles that call for the protection of civilian lives and property are often not heeded or are intentionally violated: attacks leave dozens of civilians dead, suspected spies are assassinated and local people are forced to pay taxes. And although the movement has set up mechanisms to address grievances, redress can be difficult to obtain and command and control is often patchy when it comes to dealing with abuses. However, the fact that winning the support of the local population is crucial appears also to have led to some changes since 2006. For example, orders in the 2006 Code to beat and (eventually) kill recalcitrant teachers, burn schools and have nothing to do with NGOs – which were described as 'tools of the infidels' – have been quietly dropped in 2009 and 2010.

There are obvious problems with the *Layha*, in that it condones and even orders actions that go against International Humanitarian Law, the body of law, including the Geneva Conventions, which regulate warfare. On the other hand, this report argues, the *Layha* could be used more proactively by political actors, journalists and human rights defenders to hold the Taliban to account,

particularly in cases where they violate not only International Humanitarian Law, but also their own rule book. When UNAMA reported in mid-2010 that most civilian casualties were due to insurgent attacks and criticised the Taliban for violating their own Code, it hit a raw nerve. The Taliban reacted strongly, with denial, indignation *and* a call for the setting up of a joint commission on civilian casualties. A small scrap of common ground was opened up in the stated desire by all parties to protect Afghan civilians.

Journalists – in their role of holding those in power to account – are accustomed to using whatever is to hand – whether rules, policies or an interviewee's own words – to uncover discrepancies and lies. They also might find the *Layha* useful for sharpening their reporting, for example in asking for explanations when the Taliban issue fines, ransom prisoners or conduct attacks that recklessly kill civilians – all actions which violate the *Layha*.

The Taliban are generally talked about in black and white terms: either as a group devoid of all morality or as abused and 'disappointed brothers'. Both approaches effectively let the movement off the hook. Pigeon-holing the Taliban with the Devil in effect places them beyond criticism, while the recognition that their motivation to fight may be political can easily slide into a failure to acknowledge Taliban crimes in a serious way. With negotiations and attempts at reconciliation in the air, it is important to expect more from the Taliban in terms of conduct that conforms with International Humanitarian Law. The *Layha* could be part of such a tougher and fairer approach. It provides a language and framework for condemning both specific operations and the way the movement generally wages war, creating an opportunity to use the Taliban's own words to hold the movement to account. (The original Pashto texts of all three versions of the Code, with English translations, can be read as separate downloads to this paper.)

ABOUT THE AFGHANISTAN ANALYSTS NETWORK (AAN)

The Afghanistan Analysts Network (AAN) is a non-profit, independent policy research organisation. It aims to bring together the knowledge and experience of a large number of experts to inform policy and increase the understanding of Afghan realities.

The institutional structure of AAN includes a core team (currently consisting of three senior analysts) and a network of regular contributors with expertise in the fields of Afghan politics, governance, rule of law and security. AAN will publish regular in-depth thematic reports, policy briefings and comments.

The main channel for dissemination of the reports is the AAN web site. For further information, please visit www.aan-afghanistan.org.

AUTHOR BIO: KATE CLARK

Kate Clark has worked as senior analyst for the Afghanistan Analysts Network since May 2010. Her involvement in Afghanistan goes back to 1999 when, as the BBC Kabul correspondent, she was the only western journalist based in the country. She was a frontline reporter during the 2001 war and the fall of the Taleban, contributing to award-winning coverage.

After 2002, Clark covered stories in the Middle East, but also continued to return to Afghanistan, making radio and television documentaries about the insurgency, the political economy of weapons smuggling and opium, and war crimes. Her previous publications include joint authorship of the Chatham House paper *No Shortcut to Stability: Justice, Politics and Insurgency in Afghanistan*.

© Afghanistan Analysts Network 2011.

All rights reserved. No part of this publication can may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without full attribution.