

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.

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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*.

Matt Waldman and Thomas Ruttig

Peace offerings

Theories of conflict resolution and their applicability to Afghanistan

EXECUTIVE SUMMARY

Theories of conflict resolution, based on empirical research, provide insights into measures that could help to alleviate, contain or even resolve the Afghan conflict. Such theories or strategies are not panacean. Rather, they help to understand the conflict and point towards practical steps that can help to improve the prospects for peace. As abstractions they must necessarily be adapted to circumstances. In Afghanistan, given the implausibility of outright military defeat of the insurgents, policymakers should devote more attention to non-violent means of reducing or even ending the violence, some of which we explore in this paper.

The current paper discusses seven theories of conflict resolution. Each of the theories contains insights that are relevant to the Afghan conflict, which can be briefly summarised as follows. *Ripeness theory* suggests that efforts of the US-led coalition to achieve a position of strength are not conducive to negotiations, as these are usually facilitated by a perceived 'mutually hurting stalemate', in which none of the parties believes it can escalate to victory. *Theories of mediation* suggest that a limited number of high-calibre mediators are required, using a range of skills and tactics, supplemented by various diplomatic tracks. Mediation interventions may not necessarily seek to resolve the conflict, but form part of a limited or incremental approach that seeks to

mitigate or contain the violence. *Theories of reconciliation* suggest that there should be long term efforts to promote sustained dialogue, improved relationships and trust between Afghan groups at all levels – and not just between the principal adversaries.

Power-sharing theories suggest that an inclusive, national political process should seek to establish robust institutions to share or divide state power, as this increases the prospects of an enduring peace. *Credible commitment theory* suggests that such a political process requires the involvement of trusted third parties that are willing to provide political and security guarantees. Theoretical *analysis of spoilers* suggests that certain parties, or elements of the warring parties, will seek to disrupt negotiations: strategies will be required to 'induce' or integrate some and marginalize, coerce or contain certain others.

Finally, there is currently no coherent, national strategy to promote *local peace-building* in Afghanistan but theory suggests that efforts should be made to strengthen community capacities to resolve disputes peacefully, develop trust and social cohesion within and between communities and promote inter-ethnic and inter-group dialogue.

Despite the worsening conflict, many of these insights or initiatives have been neglected or understudied in Afghanistan. A greater willingness to draw lessons from theories of conflict resolution, based on rigorous empirical analysis, could help to lay the groundwork for peace.

Martine van Bijlert

Untangling Afghanistan's 2010 Vote

Analysing the electoral data

EXECUTIVE SUMMARY

Afghanistan's second parliamentary election, which took place on 18 September 2010, was surrounded by protracted controversy. Polling day was messy, as could be expected, but the real controversy centred on the audits and disqualifications by the two electoral bodies: the Independent Election Commission (IEC) and the Electoral Complaints Commission (ECC). Although both the IEC and ECC released regular updates and large amounts of raw data, there was little transparency on how and why decisions were made. The outcome of the election appears in many cases to be at best somewhat random, and at worst considerably manipulated – and telling the difference is very difficult.

The current report aims to provide a backdrop to the main controversies by presenting an overview of the publicly available electoral data. It maps what information has been provided, what conclusions can be drawn and what information is still missing – either because it was not shared or because it is not known. The analysis was complicated by the fact that the data was plentiful but incomplete and often contradictory or incompatible. The process of piecing together a rudimentary overview of what happened to the vote required an inordinate amount of time and

energy and does not instil confidence that the IEC and ECC were at all times in control of their data.

The IEC management was faced with a massive challenge, as had been the case during the first electoral cycle of 2004 and 2005 and even more so during the presidential and provincial council election of 2009. The absence of an adequate voter registry; the mass availability of voter cards not linked to actual voters, many of which were gathered with the express intent of perpetuating fraud; and the lack of clarity about which polling centres opened on election day, made the process difficult to control.

The count and audit process, which is the focus of this report, can be divided into two phases: (1) the count and audit by the IEC, culminating in the announcement of the preliminary results; and (2) the adjudication of complaints by the ECC, followed by the announcement of the final results. During the first phase no solid information was provided on the number of votes involved. Early count data was fluid, turnout figures fluctuated, and to this day no reliable figures exist on how many votes were cast or disqualified; the IEC provided information by polling station instead. When the preliminary results were announced,

there was a large and unexplained discrepancy with the early turnout estimates.

The second phase started with the solid figures of the preliminary results, but the process was soon clouded by overlapping and *ad hoc* interventions by both the ECC and the IEC. When comparing the preliminary and final results, what happened to the vote is not immediately obvious. Many of the seemingly unexplained changes can be traced back to the addition of 511 previously not-counted polling stations by the IEC, which contained a total of more than 45,000 votes. In half the provinces between 1,000 and 5,600 votes were added, which is potentially significant enough to have changed the election results. In at least four provinces – Badakhshan, Wardak, Baghlan and Kandahar – significant discrepancies existed for which no documented interventions could be found, while several other provinces show minor but still unexplained discrepancies.

An analysis of the electoral data shows how some provinces were more affected than others. Seven provinces – Nuristan, Paktika, Badghis, Paktia, Ghazni, Khost and Wardak – saw 40 per cent or more of their polling stations not included in the final result (in Nuristan this was even 70 per cent). Other provinces suffered most when their winning or almost-winning candidates were disqualified by the ECC. In Herat, eight candidates were removed, representing almost 58,000 votes. In Zabul the disqualifications resulted in the complete overhaul of the slate of winners and almost-winners.

The IEC and ECC interventions had far-reaching consequences. The IEC claims to have disqualified 1.2 million votes, which could represent around 20 per cent of the total. The ECC disqualified far fewer votes (probably under 300,000), but it targeted winning and almost winning candidates and changed the composition of at least 10 per cent of the parliament. The lack of clarity on the basis for these decisions has fed suspicions of manipulation, while the absence of an effective appeal process makes it difficult to dismiss the protracted post-election wrangling as purely political. If there is to be any hope of less controversy in the future, electoral reform efforts will need to focus on simplified, transparent and more credible disqualification and appeal processes.

This is not just about a messy election. The tumultuous aftermath of the vote illustrates how the immaturity of the system leaves contested processes wide open to political pressure, factional manipulation and improvisation. It illustrates the fundamental problem that Afghanistan's system of government has no centre of gravity. Authorities are ill-defined. There is no mechanism for arbitration, no power that is respected enough to have the final say.

In the past the main international actors often acted as *de facto* arbiters and enforcers, but their influence and credibility has waned over the years. The contours of a factionalised government, driven by posturing and negotiated *ad hoc* solutions, are in the meantime becoming increasingly clear. With transition looming not much time or patience is left, but the international community may still have the clout and the vision to strengthen credible institutions.

The full report can be downloaded at:

<http://www.aan-afghanistan.org/index.asp?id=3>