

EAST AFR. PROT.

C.O.  
8260

1890  
23 AUG 09

28260

Governor No.  
405

1909

6 July

Previous Paper.

Witchcraft Ordinance 1909  
(No 99 1909)

Is in memo. by Mr. Advocate

Woods 3.9

These copies to library.  
The policy of this Ord<sup>n</sup> is all right.

Library

Please send the Transversal Ord<sup>n</sup>  
No 26 of 1904 + pass in E Afr  
Cox.

H. J. R.

24/100

Mr Cox  
J.R. 1/10

In Fitzgibbon  
It follows the Trans Ord<sup>n</sup>

? Sanction L F

W.B.R.  
25/8

S.R.

J.R.  
26.8

E 28. VIII

Subsequent Paper  
22.8.15  
18

GOVERNOR'S OFFICE,

NAIROBI,

July 26th 1909

166

EAST AFRICA PROTECTORATE.

No. 408

Incl: 2.

C. O.  
28260  
REC'D  
23 AUG 09

My Lord,

I have the honour to transmit herewith 2 authenticated and 10 printed copies of the Witchcraft Ordinance 1909

as passed by the Legislative Council to which I have assented in the name of His Majesty.

2. An explanatory memorandum by the Crown Advocate is also enclosed.

I have the honour to be,  
With the highest respect,  
My Lord,  
Your Lordship's most obedient,  
humble servant,

J. J. Balkin

M. Principal Secretary of State  
for the Colonies,

Downing Street,

LONDON, S. W.

INCLOSURE 102

In Despatch No. 205 of Aug 26 1909

8260

23 AUG 09

MEMORANDUM

167

--:CAG-CAG:--

THE WITCHCRAFT ORDINANCE 1909

1. The purpose of this Ordinance is to make provision for the punishment of persons practising or making use of so called witchcraft.

2. The belief in witchcraft is common throughout the Protectorate. Chief Elders and heads of families frequently profess to possess supernatural powers, and use those professed powers for the purpose of controlling the younger generation. In fact their authority is to a considerable extent due to their supposed possession of supernatural powers whereby they can punish persons who revolt against their authority or disobey their orders. As the exercise of witchcraft by such persons is generally for a proper purpose they are protected from punishment under the Ordinance under consideration.

Besides these persons who may be said to exercise white magic there are witch-doctors who exercise black magic and use their professed powers for improper purposes.

The natives unrestrained by the Administration deal with these last in a very practical manner.

If and when a witch-doctor becomes a danger and a nuisance to the Community, the Elders after solemn council issue an order that he shall be killed, and such order is promptly carried out by the young men.

Within the last twelve months the High Court have convicted Natives in several cases of murder on evidence which has shown that they had killed under the orders of their Elders men who by practising black magic had become a danger to their neighbours. The belief in the powers of these witch-doctors is deeply rooted in the minds of the Natives and cases have been proved of persons who have been subjected to the influence of spells and incantations being rendered practically insane and driven to perform acts which bring them under the punishment of the law.

As the laws applied to the Protectorate protect witch-doctors from punishment in accordance with Native customs for their misdeeds, it is only right that the law should protect the Community to the extent of providing some other proper punishment for the persons who by the pretended exercise of supernatural powers cause real injury to others. In fact it is certain that unless a proper punishment is provided by law the Natives will continue to protect themselves as hitherto.

As the Ordinance is based on laws in force in British Colonies I consider that it may properly be assented to and promulgated immediately.

*J. P. C. O'Connell*

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CROWN ADVOCATE.

18-7-09.



THE WITCHCRAFT ORDINANCE 1902.

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<p>Section 1. Title</p>	
<p>Section 2. Persons pretending to exercise witch- craft.</p>	<p>In effect Section 34 of the Transvaal Ordinance No.26 of 1904 omitting reference to fortune telling.</p>
<p>Section 3. Magistrate supply advice for witchcraft with intent to injure.</p>	<p>Section 32 of the above.</p>
<p>Section 4. Persons using witch craft with intent to injure.</p>	<p>Section 33 of the above.</p>
<p>Section 5. Magistrates etc. shall be prosecuted under this Ordinance for Acts as such without intent of the Magister.</p>	<p>This provision is necessary for the Protection of Chief and Elders whose authority is to a considerable extent based on their imagined power of punishing offenders by supernatural means.</p>