



PROTECTING NATIONAL RESOURCES

Role of Office of the Special Prosecutor

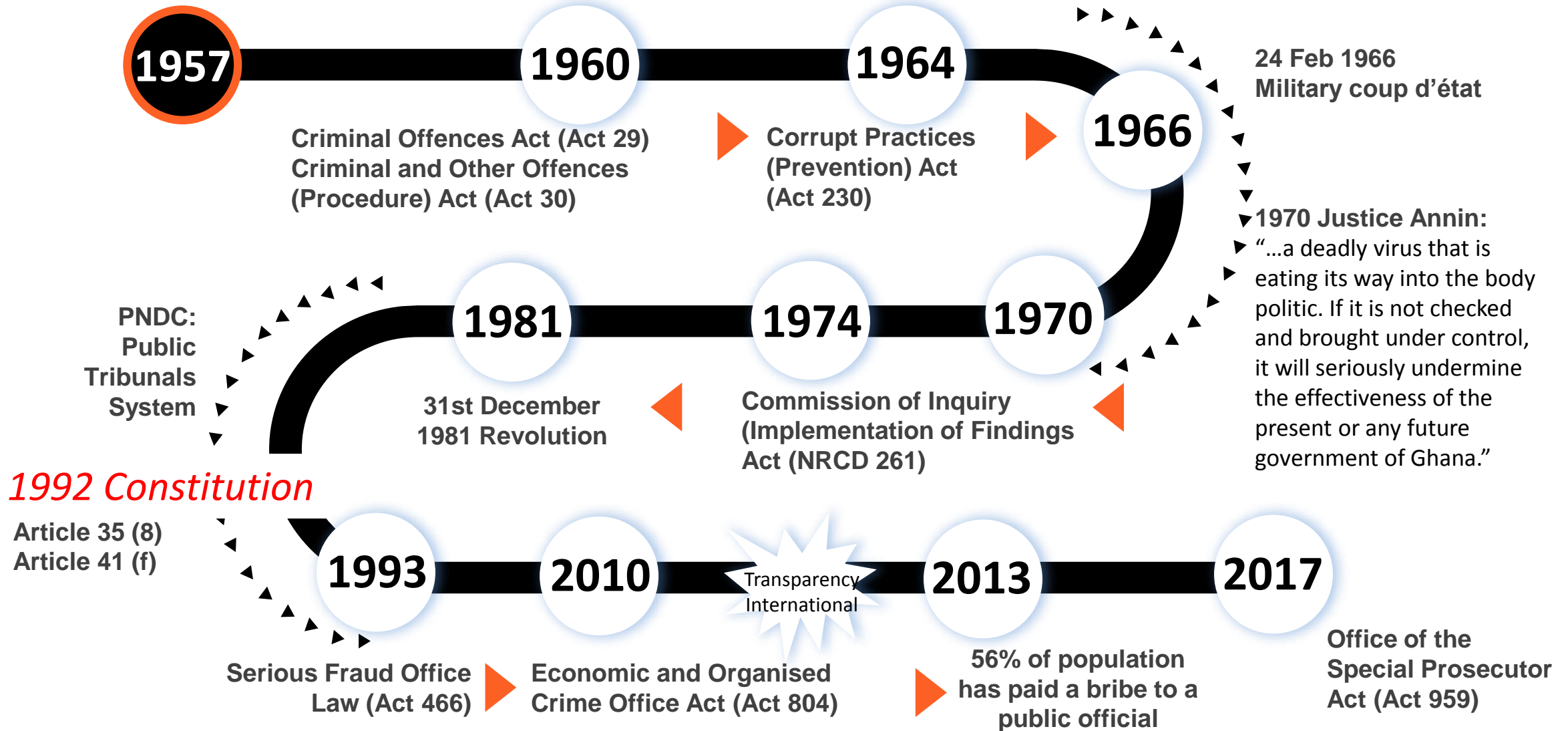


Office of the Special Prosecutor Act 2017 (Act 959)

On 3 Jan 2018, the Office of the Special Prosecutor came into existence with notification in Gazette of Act 959 enactment...

- Corporate legal body with perpetual succession with powers to sue, be sued and acquire property
- Special Prosecutor personifies Office: ultimately responsible for day-to-day admin & functions of Office
- Enjoined to prevent, investigate and prosecute corruption and corruption-related offences, and recover/manage related assets

Fighting Corruption Historical Perspective



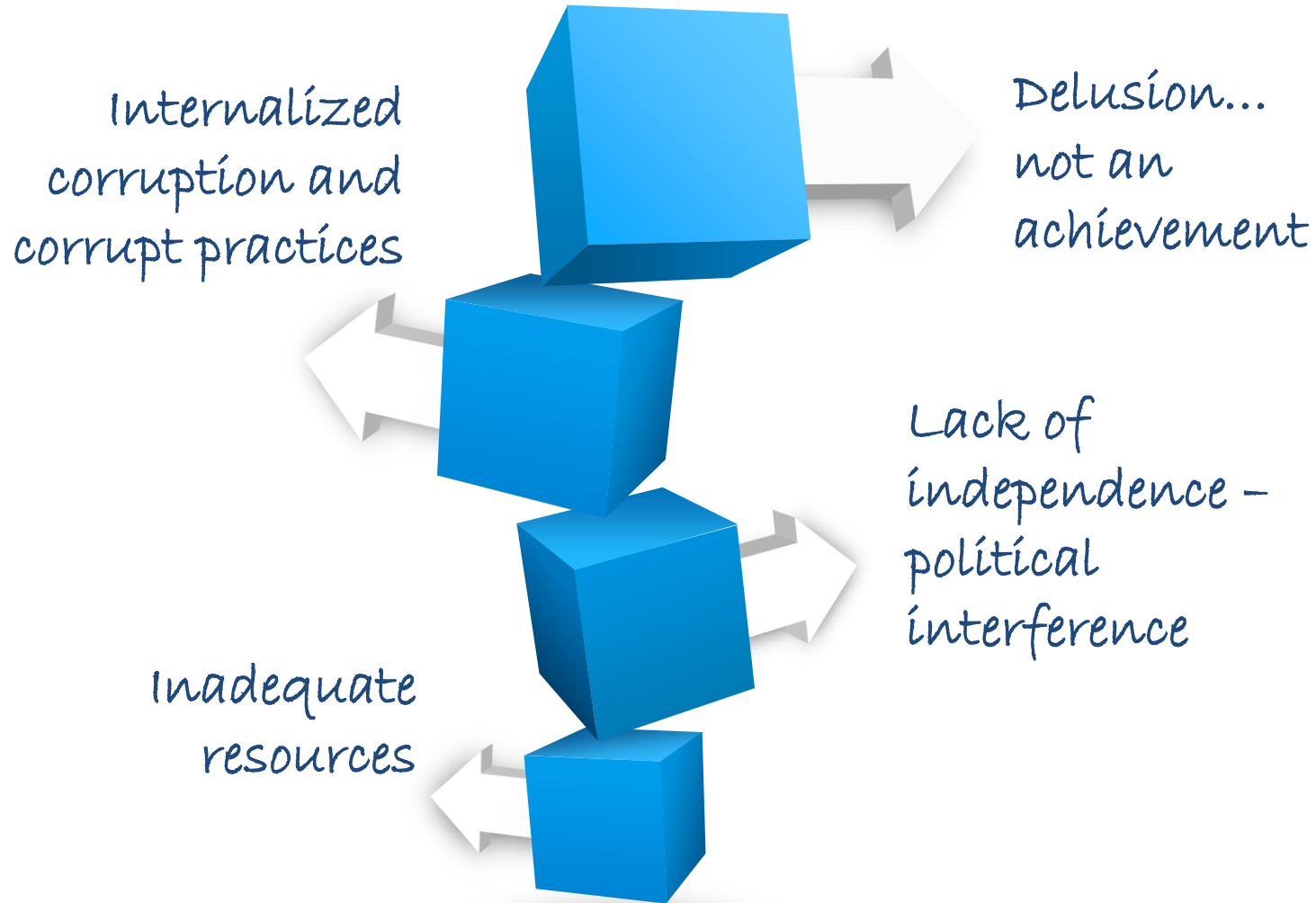
Various Enactments

Assisting Law Enforcement



- Bureau of National Intelligence
- Financial Intelligence Centre
- Ghana Revenue Authority
- Banking, and Bank of Ghana Acts
- Public Procurement Authority Act
- Ghana Immigration Service Act
- Political Office Holders (Declaration and Disqualification) Act, 1998 (Act 550)
- Internal Audit Agency Act, 2003 (Act 658)
- Whistleblowers Act, 2006 (Act 720)
- Anti-Money Laundering Act, 2007 (Act 749)
- Mutual Legal Assistance Act, 2010 (Act 807)
- Public Financial Management Act, 2016 (Act 921)
- Witness Protection Act, 2018 (Act 975)
- Companies Act, 2019 (Act 992)
- Right to Information Act, 2019 (Act 989)
- *Inter alia...*

► **OSP... Is it the Solution?**



“This nation’s experiences from independence show beyond any further research that the number of normative provisions on corruption in the Constitution or enacted by Parliament have never successfully actualized in a successful and lasting fight against corruption.”

Office of the Special Prosecutor

Objectives

Defined in Act 959



OSP Functions

- ▶ Investigate and prosecute cases of alleged or suspected corruption and corruption-related offences
- ▶ Under:
 - Public Procurement Act
 - Criminal Offences Act
 - Any relevant legislation
- ▶ Involving public officers, politically exposed persons and persons in private sector involved in commission of offence

Recover and manage proceeds

Disseminate information

Cooperate and coordinate

Receive + investigate complaints

Receive and act on referrals

Any other functions tied to objectives

OSP Mandate With Governance

▶ ***Not subject to direction or control of a person or an authority in performance of its functions***

▶ ***Be authorized by the Attorney General to initiate and conduct prosecution***



Board Duties

- a) formulate policies necessary to achieve objects of Office;
- b) ensure proper and effective performance of functions of Office;
- c) advise Special Prosecutor on recruitment and selection of Secretary and other senior staff of Office;
- d) develop and monitor implementation of code of conduct for staff of Office;
- e) facilitate cooperation between Office and relevant national investigative bodies to ensure proper and effective performance of functions of Office; and
- f) advise Special Prosecutor on any policy matters that he may refer to the Board

Special Prosecutor Qualifications and Functions

- Subject to strict nomination and approval process by Parliament before Presidential appointment
- Positions and status are notionally equated to those of a Justice of Court of Appeal and a Justice of High Court respectively
- Have security of tenure and independence equal to those of superior court justices



Photo credit: ghanapoliticsonline

- ▶ Accountable to Board in performance of functions under the Act,
- ▶ Has full authority and control over the investigation, initiation and conduct of proceedings under functions of the Office, and
- ▶ May assign responsibilities to an authorized officer but shall not be relieved of ultimate responsibility for performance of assigned responsibility

Structure Divisions



[Police] Powers

- Request for information
- Make production orders or apply for such orders
- Search and seizure of documents
- Search and seizure of tainted or suspected tainted property
- Making freezing orders and applying for freezing orders
- Realization of property
- Mutual legal assistance
- Many other powers

Prevention “Stitch in Time Saves Nine” Approach

An efficient and effective prevention of corruption division and programme greatly reduces the opportunity for corruption and makes corruption a high risk enterprise for those who may contemplate engaging in it.



Overview Prevention of Corruption Division

Measures to prevent corruption

- Analysis of risk of corruption
- Anti-corruption programmes
- Anti-corruption assessment of legislation and drafts legislation
- Provision of information in relation to persons applying for or holding a position in ministries, departments and agencies
- Provision of information to public service commission or other legal entities
- Education and information of the public
- Publicizing the detected acts of corruption
- Other corruption measures provided by law

Identifying causes

- ❑ *Deficiencies in regulatory enactments, regulations or procedures;*
- ❑ *Deficiencies in administration of institutions, including lack of internal control mechanisms or deficient mechanisms;*
- ❑ *Individual interest, including greed, lack of ethicalness and legal awareness; and*
- ❑ *External influences, including public attitude, culture and traditions*



11 types of corruption offences the Special Prosecutor can investigate
 GhanaWeb - Aug 8, 2019
 The **Special Prosecutor**, Martin Amidu has reiterated that the **Office** of ... to fight corruption and corruption-related offences in **Ghana** unlike in ...
 I can't probe PDS case – Martin Amidu sheds light on his jurisdiction
 Myjoyonline.com - Aug 8, 2019



Special Prosecutor: You can investigate PDS saga – Minority insists
 GhanaWeb - Aug 8, 2019
 The Minority has expressed shock at the **Special Prosecutor's** claim that ... Martin Amidu said section 79 of the **Office** of the **Special Prosecutor** ...



Name those you accuse – Dr. Akwetei tells 'undermined' Special ...
 GhanaWeb - Jul 20, 2019
 The **Special Prosecutor** who has been under pressure justify the ... of the **Office** of the **Special Prosecutor** in Fighting Corruption in **Ghana**.”
Special Prosecutor: Martin Amidu set to rejoin NDC
 Pulse Ghana - Jul 20, 2019

Pulse Ghana

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Martin Amidu asked to 'resign honorably' to avoid further embarrassment
 GhanaWeb - Jul 20, 2019
 A statement issued by Mr Amidu, titled, “Challenges of the **Office** of the **Special Prosecutor** in Fighting Corruption in **Ghana**”, said his outfit ...



We warned Amidu against taking up Special Prosecutor appointment ...
 GhanaWeb - Jul 17, 2019
 CHALLENGES OF THE **OFFICE** OF THE **SPECIAL PROSECUTOR** IN FIGHTING CORRUPTION IN **GHANA**: BY MARTIN A. B. K. AMIDU, THE ...
Public officials make work tough - Martin Amidu threatens action ...
 International - Graphic Online - Jul 17, 2019

Journalducamera...

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Let us be clear about what the Special Prosecutor may do...
 For the benefit of not misleading the public!

Section 79 Interpreting the Act

The efficiency and efficacy of the role of the Office to protect national resources depends on actual investigative and prosecutorial jurisdiction of the Office as provided for in the interpretation section 79 of the Act

- **Average person** cannot be expected to read and understand complexities of Office of the Special Prosecutor Act
- **Wrong assumption** that Office is empowered to investigate and prosecute every corruption and corruption-related offence in Criminal Offences Act, Public Procurement Act, among others
- **Problem compounded** when enlightened persons, civil society, and political organizations choose to petition or complain to Office on matters not defined in the interpretation section of the Act
- **Media add to hype** – cheap publicity without checking facts

Parliament Restrictions Limiting Office Functions



Interpretation: “corruption and corruption-related offences” “to mean”, (*as distinct from expansive word “to include”*) offences under:

- Section 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offence Act, 1960 (Act 29);
- Section 92 (2) of the Public Procurement Act, 2003 (Act 663); and
- **Existent offences** under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b)

Section 146

- Dishonestly receiving property that a person knows to have been obtained or appropriated by a punishable criminal offence

Section 151

- Extorting property from any other person by means of threat

Section 179C

- Using public office for private gain

Section 239

- Corruption of and by public officers

Section 252

- Accepting or giving bribe to influence a public officer or juror

Section 253

- A corrupt promise by a judicial officer or juror

Section 254

- Corrupt selection of a juror

Section 256

- Corruption, intimidation, and impersonation in respect of election

Section 258

- Falsification of returns at election

Section 260

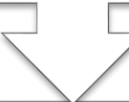
- Withholding public money by a public office

- ▶ Section 92(2) of the Public Procurement Act, 2003 (Act 663) deals with offences constituted under the Act for which jurisdiction is given to the Office
- ▶ *Surprisingly it fails to mention Section 93 dealing with corrupt practices*

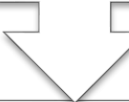
The Office does not and cannot investigate financial and economic offences in which no evidence of corruption can be demonstrated from the beginning.

Challenges Hampering Progress

Bureaucracy. Bureaucratic delays affecting 2019 budget spending – recruiting and accommodation challenges continue



Non-compliance. Heads of institutions who simply refuse to comply with laws designed to ensure good governance and to protect the national purse by fighting corruption



Bi-partisan Pressure. Members of the Executive and Parliament (bi-partisan) interfering in performance of OSP's independent functions



Manipulation. Tendency of political appointees and other politically exposed persons to manipulate in choosing their own forum for investigation of offences affecting them

Collaboration Ghana Audit Service + Other Institutions

- **Furtherance of Act.** Office required by functions to cooperate and coordinate with competent authorities and other relevant local and international agencies in furtherance of Act
- **Intelligence.** By nature of its work, Ghana Audit Service provides avenue for intelligence to OSP on suspected commission of corruption and corruption-related offences
- **Results.** OSP has also collaborated effectively with Ministry of Finance and Financial Intelligence Center in prevention of corruption and corruption-related offences, where results have led to protection of national resources
- **Support.** Audit Service, Ministry of Finance and FIC may assist OSP with services of their officers in investigations



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Concluding Observations



It is a beginning

“mere enactment of the Office of the Special Prosecutor Act is no guarantee of the success of the President and the Government’s intention to fight corruption”

Cooperation is needed, not divergence

“critical ministries and agencies have failed or refused to produce public records on demand to aid the Office in critical investigations of offences running into millions of cedis ”

Independence and impartiality are key

“if massive bi-partisan pressure to tacitly influence decisions of the Courts succeeds, the President’s anti-corruption vision will not be achieved and this will be an exercise in absurdity”