Compliance in Question: The McKinsey Africa Scandal

Annerize Shaw (Kolbé)
University of London

One would think that compliance agencies are crafters of compliance and not silent ringleaders of ethical pitfalls. South Africa's compliance landscape is distinctive. It created a unique opportunity for South Africa to be a leader in addressing historical socio-economic disparities, yet it seems that a colonial mentality keeps seeping through. Lip service is prevalent across the board, disguised in company culture and often only exposed when the so-called corporate line has been crossed.

The McKinsey Africa Scandal is a series of controversies involving the global consulting firm McKinsey & Company in its work with state-owned enterprises in South Africa (Eskom and Transnet) (US Department of Justice 2024). Between 2012 and 2016, McKinsey partnered with local companies, including the controversial Gupta-linked Trillian Capital, to secure lucrative contracts worth billions of rands. Allegations arose that McKinsey benefited from irregular procurement practices, failed to conduct adequate due diligence on its partners, and allowed itself to be implicated in state capture—a widespread corruption scheme that misappropriated public funds (Zondo Commission 2022). In response to public and regulatory pressure, McKinsey acknowledged lapses in governance. In 2018, the firm returned approximately ZAR1 billion to Eskom (the McKinsey-Eskom repayment). More recently, in December 2024, McKinsey agreed to pay over USD122 million to resolve a United States (US) investigation into a bribery scheme involving payments (bribes) to officials at Eskom and Transnet. The scandal highlighted critical compliance failures, such as inadequate risk assessments, insufficient oversight of local partnerships, and a lack of internal controls to prevent unethical practices, despite the partial existence of valid compliance programmes within these companies.

Existing legal frameworks in South Africa, regulating anti-corruption and compliance establish a robust structure for corporate governance, such as the Prevention and Combating of Corrupt Activities Act 12 of 2004. However, the recent McKinsey Africa Scandal exemplifies how enforcement gaps, rather than legislative deficiencies, enable corporate misconduct (especially in middle-income economies, such as South Africa). A lack of resources and political independence renders enforcement inconsistent. Unlike the US Department of Justice or the United Kingdom (UK) Serious Fraud Office, South Africa's National Prosecuting Authority and Financial Intelligence Centre often lack the autonomy and funding to prosecute corporate misconduct effectively. Despite existing legal provisions, systemic issues within regulatory bodies, such as delays in case handling and a lack of specialized forensic expertise further weaken enforcement efforts. South Africa's weak enforcement capacity is reflected in its ranking on the Transparency International Corruption Perceptions Index (CPI), which consistently places the country among those struggling with systemic corruption. In 2023, South Africa scored 42/100, indicating significant governance and enforcement failures (Transparency International 2023).

Bad compliance culture is often at the heart of corporate misconduct (Miller 2017). Compliance driven solely by a desire to avoid penalties and fines reduces ethical oversight to a mere tick-box exercise. Penalties and fines are absorbed as business costs and therefore do not serve as deterrents. This superficial approach fails to create an environment where integrity thrives and, instead, leaves room for unethical behaviour to proliferate. This approach often depends solely on a code of conduct and other watered-down human resources policies, uses case-by-case decision-making, and places excessive reliance on external advisors. A compliant company culture must start at the top, but changes should be implemented throughout the organization. While South Africa's anti-corruption laws align with international best practices, its enforcement failures place it significantly behind global leaders in governance and compliance. According to the Transparency International CPI, South Africa's score lags behind peer middle-income economies like Botswana and Mauritius, both of which benefit from stronger regulatory independence and enforcement mechanisms. This further underscores the need for South Africa not only to adopt stringent regulations but also to ensure their consistent enforcement.

Assigning senior staff to compliance functions does not mitigate risk; it may instead increase the likelihood of bypassing compliance structures, as illustrated in the McKinsey Africa Scandal (by Eskom and Transnet).

One change companies should adopt is implementing a structured compliance programme and creating a separate department staffed with compliance professionals whose goal is to prioritize genuine ethical integrity over profits or influence. Ultimately, compliance is only as strong as the people who work within an organization.

The McKinsey Africa scandal should serve as both a warning to international companies exploiting South Africa's unique historical circumstances and a wake-up call to its leaders who leverage these circumstances for personal and/or corporate gain. Many companies foster a culture of cosmetic compliance, driven by a self-serving mindset reminiscent of past generations' exploitative attitudes. Company culture remains driven by legal avoidance, rather than ethical responsibility. Worse still, some South African companies outsource compliance to agencies that act as silent enablers of unethical practices, disguising this under the pretence of adherence to regulations. This is especially true in regulated sectors that must meet industry-specific requirements, such as those stipulated in the Codes of Good Practice on Broad-Based Black Economic Empowerment, issued under the Broad-Based Black Economic Empowerment Act 53 of 2003. Prioritizing profits and influence over genuine ethical integrity continues to normalize corporate environments that allow dishonest and unethical behaviour to flourish. More often than not corruption is embedded in bureaucratic structures, making prosecution difficult.

Regulatory effectiveness is not solely reliant on enforcement agencies but also on market-driven compliance mechanisms. Institutional investors, such as pension funds and multinational shareholders, play an increasing role in demanding corporate transparency. For instance, global investment firms like BlackRock, which also operates in South Africa, have historically divested from companies with weak governance, forcing companies to strengthen ethical oversight to maintain investor confidence. Additionally, emerging regulatory frameworks, such as the European Union Directive on Corporate Sustainability Due Diligence 2024, will likely exert indirect pressure on South African companies to meet global compliance standards. These developments indicate that enforcement gaps may be partially addressed by financial market scrutiny and reputational risks, as investors and international regulatory expectations increasingly shape corporate behaviour.

Companies operate through individuals: this makes the investigation of individual conduct the most efficient and effective way to uncover the facts and scope of corporate misconduct. Delays in convictions (justice) and perceived leniency undermine the incentive for companies to strengthen anti-corruption measures. To rebuild trust, the judicial system must expedite corruption cases and impose meaningful penalties. Efficiency in the judicial process is essential to restore public confidence and deter future misconduct.

South Africa can certainly draw on global examples and technological enhancements to strengthen its compliance framework. Countries with a compliant company culture often integrate ethics into every aspect of business operations. In the US, the Foreign Corrupt Practices Act 1977 (FCPA) is a benchmark for anti-bribery enforcement. To enhance its existing legislation, South Africa could implement similarly stringent measures, ensuring accountability for all entities and actively pursuing violations. This could include strengthening prosecutorial independence by insulating regulatory agencies from political influence, similar to the US Securities and Exchange Commission, and, additionally, increasing funding and resources for forensic investigations—mirroring the FCPA's dedicated compliance enforcement teams. South Africa could also introduce a consolidated public enforcement database to disclose corporate penalties, enhancing transparency and deterrence.

However, the recent slowdown in FCPA enforcement in the US, driven by policy priorities and resource constraints, illustrates that the legal framework is only as effective as its enforcement mechanism (Baker McKenzie 2025). The White House justified its temporary pause on FCPA enforcement by arguing that aggressive anti-bribery measures could harm the US economic competitiveness and national security. This shift underscores how political influence and resource allocation can significantly impact compliance efforts, even in jurisdictions with well-established regulatory frameworks. This confirms that there is indeed a global pattern of selective enforcement, driven by political and economic priorities rather than legal principles. For South Africa, this serves as a cautionary example. While adopting stringent anti-corruption laws and enhancing prosecutorial independence are critical, these measures must be reinforced with unwavering political will and adequate resources. Without consistent enforcement, even the strongest laws risk becoming ineffective, or worse, being dismantled entirely.

Unlike the US and UK, South Africa currently lacks a legislative framework for deferred prosecution agreements (DPAs) and, as such, corporate misconduct is not meaningfully penalized (Eskom and Transnet). This absence means there is no formal mechanism or legislation enabling the use of DPAs to resolve corporate criminal matters and supports the need for independent anti-corruption commissions and stronger whistleblower protections. Stronger laws and financial rewards can encourage insiders to report misconduct (in line with the US Dodd–Frank Wall Street Reform and Consumer Protection Act 2010). Penalties and fines alone are insufficient as corporations treat them as operational costs. Implementing corporate bans for repeat offenders and holding executives personally accountable through criminal liability and disqualification could create stronger deterrence.

While the McKinsey-Eskom repayment functioned as a negotiated settlement, it was not classified as a DPA, although it bore similarities in intent. Implementing a formal DPA framework could significantly benefit the South African legal system by streamlining the resolution of corporate corruption cases. It would encourage greater co-operation from companies in investigating and addressing systemic corruption while expediting restitution and fostering compliance reforms. While DPAs are more commonly employed with companies than individuals, they are not unprecedented in other jurisdictions. In high-profile corruption cases where an individual's actions are central to broader investigations, a DPA might be a viable option, particularly when prosecution under existing laws appears less feasible. South Africa's equivalent of DPAs, plea and sentence agreements (Criminal Procedure Act 51 of 1977, section 105A) does not allow deferring prosecution in exchange for compliance with specified conditions, neither does it require corporate offenders to pay fines or implement compliance measures (immunity from prosecution under the National Prosecuting Authority). Witness co-operation agreements (Criminal Procedure Act 51 of 1977, section 204) also do not impose financial or compliance-related obligations. DPAs offer a pragmatic approach to balancing justice and practical considerations, especially in complex corruption cases where traditional prosecution is challenging. Adapting the framework to include individuals could help address high-profile cases where an individual's actions are central. It could encourage whistleblowing, transparency, and accountability while maintaining political and public trust.

Implementing DPAs in South Africa would likely face public scrutiny and concern, given the country's unique socio-political landscape and demand for accountability. Critics may fear that DPAs could enable corporate impunity. To address these concerns, any proposed framework must: (i) clearly prioritize justice and accountability; (ii) include strict oversight and transparent processes; and (iii) ensure that negotiated resolutions impose meaningful penalties and compliance obligations. The balance lies in addressing public demand for accountability while recognizing the practical need for effective resolutions. Justice delayed is justice denied.

Artificial intelligence (AI) can enhance compliance and should be leveraged for compliance monitoring. However, regulatory decisions require human judgement. AI can detect procurement irregularities, such as bid-rigging and over-invoicing, and identify conflicts of interest by analysing employee and supplier data. Whilst AI flags high-risk transactions or business practices in real time, enforcement agencies and compliance professionals must interpret the data and take action. AI's effectiveness in compliance depends on integration with human oversight. Furthermore, AI is not infallible, it relies on historical data that contains inherent biases and produces false positives, leading to unnecessary, costly investigations. High-risk industries (mining, energy, construction and procurement), public tenders and state-owned enterprises (Eskom and Transnet) should be legally mandated to adopt AI-driven tools to detect and mitigate internal corruption risks. These sectors are particularly vulnerable to financial misconduct, bribery and regulatory loopholes. Without human review, AI-biased compliance systems risk flagging irrelevant transactions while missing more sophisticated schemes. AI should be viewed as an investigative aid, not a standalone solution, as human intervention remains crucial in contextualizing flagged risks and making informed enforcement decisions.

Despite AI's potential, companies can manipulate compliance systems by exploiting AI's automation speed, outpacing human regulators. One method is data-laundering, where companies alter financial structures to mislead AI risk assessments, making illicit transactions appear routine. AI's self-learning nature also presents a learning loop vulnerability, as corporations can flood systems with legitimate transactions to train AI into misclassifying certain patterns as low-risk. Additionally, regulatory arbitrage allows companies to shift compliance-sensitive activities to jurisdictions with weaker AI enforcement, capitalizing on gaps between global regulatory frameworks. Some companies may even exploit false positives, generating excessive minor infractions to overload enforcement agencies, diverting attention from deeper misconduct. To prevent AI-driven compliance manipulation, regulators must implement real-time AI audits, mandate hybrid AI–human forensic reviews, and deploy government-run AI "shadow systems" to cross-check corporate compliance claims. Without these safeguards, AI risks being repurposed as a tool for sophisticated regulatory evasion rather than genuine enforcement (Azzutti & Ors 2021).

South Africa has recently taken steps to strengthen its regulatory framework, notably with the introduction of a beneficial ownership register in April 2023, however, its restricted access, limited to law enforcement and “competent authorities”, raises significant concerns (Cliff Dekker Hofmeyr 2023). Corruption is often embedded within these very structures, allowing bad actors to control and limit access to crucial ownership information. In contrast, countries like the UK provide public access to such registers, ensuring greater transparency and accountability.

While South Africans can request shareholder information under the Companies Act 71 of 2008 (section 26), this process is neither transparent nor accessible. The courts have clarified that the right of access to company information exists independently of privacy laws (*Nova Property Group Holdings v Cobbett* 2014). However, in practice, companies exploit legal loopholes, delay responses, or impose unnecessary documentation requirements, effectively stalling access. Most requesters face lengthy, costly litigation to enforce their rights—an impractical solution for the average South African citizen, who is often unaware of these legal protections.

To align with international best practices, South Africa must make the Beneficial Ownership Register publicly accessible. Transparency is one of the most effective tools in combating corporate corruption. Additionally, companies that fail to self-report should face stricter penalties beyond mere administrative fines, which are easily absorbed as operational costs. More severe consequences, such as freezing assets, would serve as a meaningful deterrent and reinforce corporate accountability.

The lessons from the McKinsey Africa Scandal illustrate that South Africa does not necessarily need new laws but effective enforcement of existing ones. Strengthening enforcement requires political will, adequate funding for regulatory bodies, and market-driven compliance measures that hold corporations accountable. Moreover, while AI presents new opportunities for compliance monitoring, its effectiveness is contingent on human oversight and enforcement mechanisms that act on flagged risks.

The McKinsey Africa Scandal underscores a stark reality: compliance is only as strong as its enforcement. While South Africa has a robust legal framework, systemic enforcement failures, driven by political interference, resource constraints, and bureaucratic inefficiencies, allow corporate misconduct to persist. The reliance on cosmetic compliance and legal loopholes highlights the urgent need for a shift from mere regulatory adherence to a culture of ethical accountability.

Addressing these challenges requires a multifaceted approach. Strengthening prosecutorial independence, increasing funding for forensic investigations, and implementing DPAs could enhance corporate accountability. Additionally, market-driven compliance mechanisms, such as investor pressure and reputational risks, may supplement regulatory gaps. Transparency measures, including public access to beneficial ownership registers and stricter penalties for non-disclosure, would further deter misconduct.

Technological advancements, particularly AI-driven compliance tools, present opportunities to enhance oversight, but they are no substitute for human judgement and institutional integrity. Without consistent enforcement and meaningful consequences, even the most comprehensive legal frameworks risk becoming empty gestures. The lesson from the McKinsey Africa Scandal is clear: South Africa does not need more laws, it needs the political will and institutional capacity to enforce the ones it already has. The Transparency International CPI serves as a stark reminder that South Africa's compliance failures stem not from legislative shortcomings, but from an inability to effectively enforce anti-corruption measures. Without addressing this enforcement gap, South Africa will continue to rank among countries where corruption is not just tolerated but embedded within the regulatory system.

About the author

Annerize Shaw (Kolbé) *is an Admitted Attorney of the High Court of South Africa with expertise in corporate and commercial law. She has advised multinational corporations on regulatory compliance, corporate governance, and business restructuring, including complex ownership structures. Passionate about legal scholarship, she has authored legal articles and is committed to contributing to legal discourse through research and writing. As an aspiring legal academic, she seeks to bridge the gap between legal practice and academia.*

Email: annerize.shaw@gmail.com.

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