

Legal aspects of Marine Spatial Planning in Kenya

MSP FACT SHEET

A clear legal framework is critical for the success of any plan. Such a framework ensures the planning is aligned to various laws and regulations. Kenya's Marine Spatial Planning (MSP) process is anchored on

the national Constitution, the Physical and Land Use Planning Act (PLUPA), 2019, as well as relevant sectoral laws, rules of international law, Treaties and Conventions ratified by Kenya.

Legal aspects of MSP include public participation, which is a constitutional requirement for all planning processes, and the need to align to other existing national and international laws.

The Definition of Land in Kenya

Article 26 of the Constitution of Kenya, 2010, defines land as including the surface of the earth and the sub-surface rock, any body of water on or under the surface, marine waters in the territorial sea and the exclusive economic zone, natural resources completely contained on or under the surface and the airspace above the surface. Thus, for MSP, the ocean and marine environment is classified as land.



MSP as a National Government Project

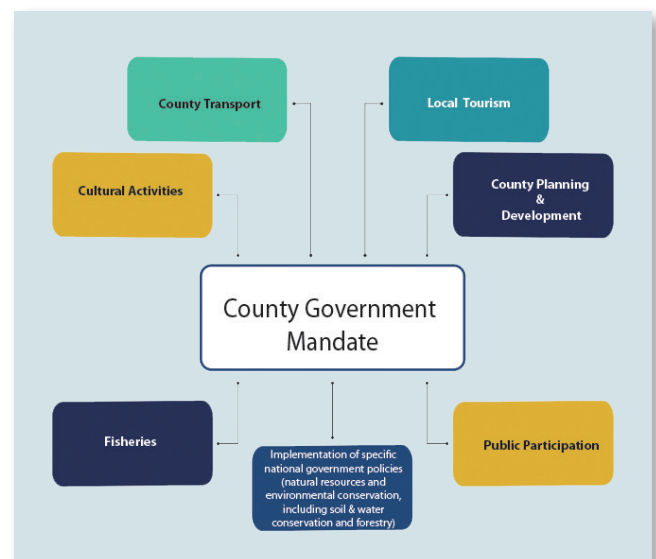
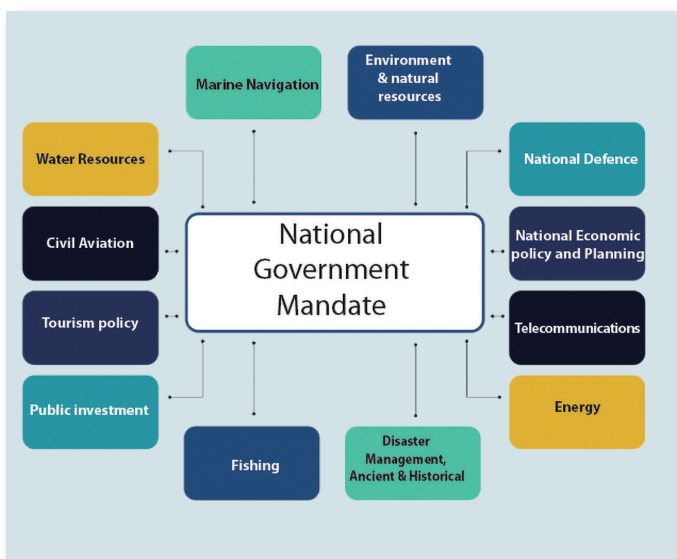
The Marine Spatial Plan is a national strategic project. It involves coordination of several sectors in which the Constitution has assigned the National Government rights and responsibilities for resource use. These includes guiding on general principles of land planning and the coordination of planning by the counties.

The 4th Schedule of the Constitution of Kenya, Article 22 and Article 63 mandate the National Government to plan on public land touching on the use of international waters and water resources.

At Article 62 of the Constitution of Kenya classifies Public Land to include:

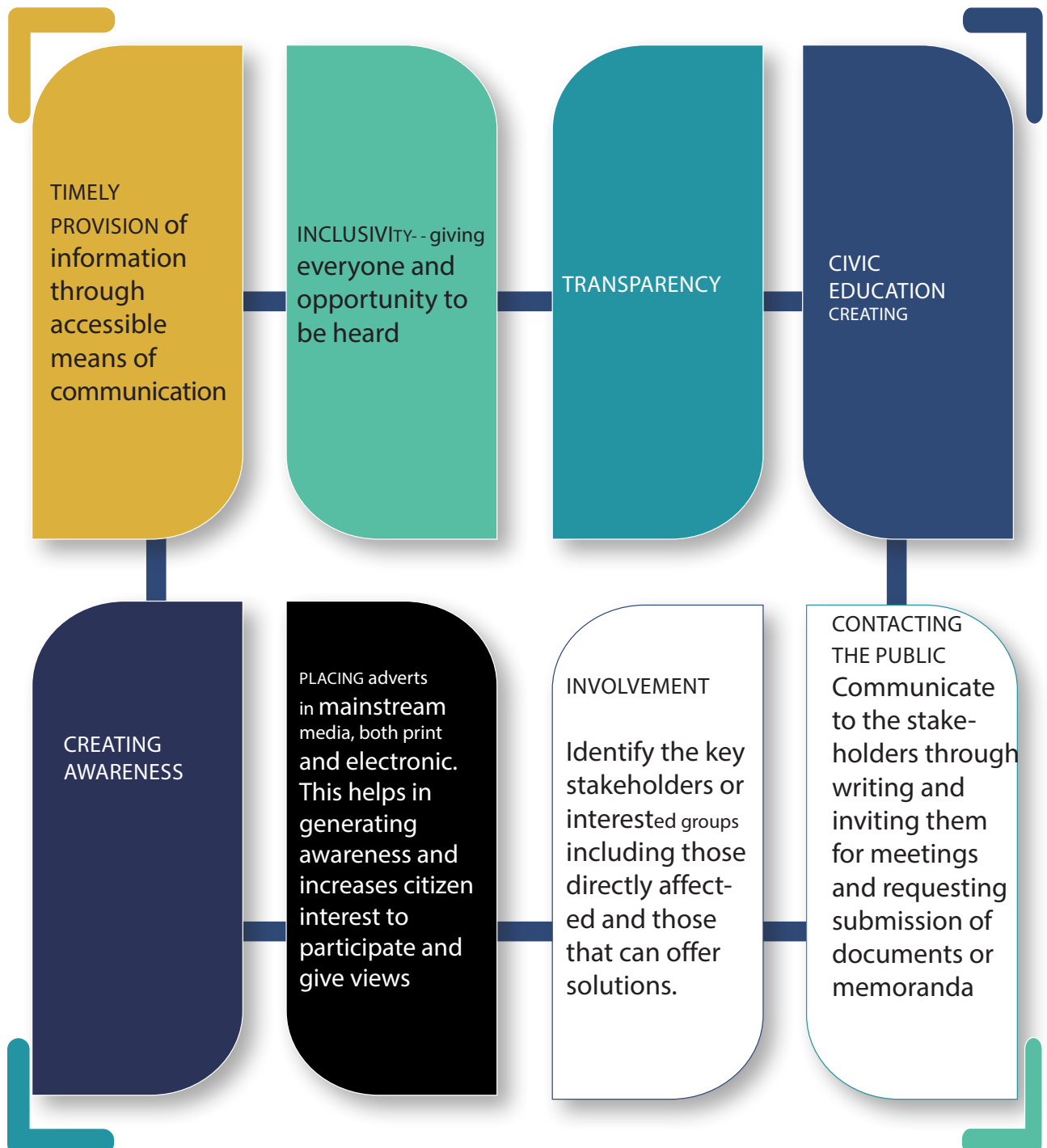
- all minerals and mineral oils as defined by law,
- government forests other than forests to which Article 63 (2) (d) (i) applies,
- government game reserves, water catchment areas, national parks, government animal sanctuaries, specially protected areas,
- all rivers, lakes and other water bodies as defined by an Act of Parliament;
- the territorial sea, the exclusive economic zone and the sea bed; and
- the continental shelf and all land between the high and low water marks.

National and County Government Mandates



Public Involvement

Public participation is a legal requirement for all planning processes. However, the process must be genuine so that the voices of citizens can be heard and considered in the planning and legislation. Public participation should adhere to the principles outlined below.



MSP Dispute Resolution and Grievance Handling

The MSP has a grievance handling mechanism that gives parties affected by the planning process an opportunity to present their concerns.

- PLUPA, provides for ways for handling grievances by individuals.
- The process for handling grievances by government agencies and counties is outlined in the National Government Coordination Act, and the Intergovernmental Relations Act.

- The Environment and Land Court should be the last resort in dispute resolution, otherwise Alternative Dispute Resolution should apply.
- The County Executive Committee Member or Cabinet Secretary of the concerned ministry should establish a liaison committee to hear and resolve the matter failure to which the court is engaged.

MSP and Information

The MSP is guided by a data management plan that adheres to the Data Protection Act and other relevant legislation.

Legal frameworks for MSP are adapted to national needs

Marine Spatial Plans must be compatible with existing national and international laws governing activities like fishing, shipping, oil and gas exploration, and marine protected areas. There is no single instrument specifically

governing MSP, leading to variations in legal frameworks across countries. As the practice of MSP develops, legal frameworks are being continuously refined and adapted to address new challenges and specific contexts.

