
Who Would Benefit from the New Family Code?

By: Giusette León García / CubaSi

22/11/2021



No need to think much about it: Love. The new Code would benefit affection, social and family responsibility that comes with that love, which leads to respect, balance, and harmony.

Does it look at marriage with another perspective? Yes, of course. It does with a 2021 approach, but it is not a code to legalize same-sex marriage, as some are determined to state. It is, actually, a law to guaranteeing equal rights and obligations for the varied, existing families, which are not somebody's invention, but a fact that colors families.

All families... That plural form was precisely the starting point in the conversation we had with Iris María Méndez Trujillo, Dr. in Legal Sciences and Associate Professor of Family Law at the University of Matanzas.

Why "families" and not "family" as written in the current code?

"It is necessary to be aware of the different family typologies that contemporary society has. Family stopped being mom, dad, and baby. There are actually many: single-parent family, in which an adult, generally the mother, brings up the children; homoaffective family, which is the one derived from the union between same-sex individuals; Assembled or blended family, which is very common, and occurs when a widowed or divorced individual brings, to a second union, children from previous relationships, who are raised by related parents (commonly called stepfathers and stepmothers); and extended families, where grandparents, uncles, cousins, etc...live at the same place.

"All these typologies are today very common in Cuba and this draft bill guarantees the duties, rights, obligations and responsibilities in each of them. Its top priority is to giving paramount importance to affection, which cannot be missing in any of them and is part of the Cuban Constitution. The 2019 official statement in the Constitution gives legal effect to affection and this is perfectly reflected here."

A common subject of discussion in relation to the Draft Bill is the same-sex marriage. Is it the only contribution this new legislation proposes on gender?

"The society has focused on opposing the code on the issue of homoaffective couples and the adoption process of these couples. However, what constitutes a family is not the gender of its members, but a family dynamic that works with respect, affection, and balance.

"The current Code, for example, gives the mother a preferential right to choose guardianship and care, and portrays it black and white: in case of separation, it is the mother's preferential right. The draft bill puts mother and father on the same level, which is how it should be. Life shows that there are good mothers and good fathers. That is why I am going to talk to you again about affection, as a paradigm this code embraces. To me, affection prevails in each new institution this code is related to. If there is no affection, no family typology works.

"The code, in each institution it dictates, affection is the most important thing. Another example that makes it superior is that the 1975 Code does not include anything related to domestic violence, although it is evident that this has existed since forever and the Draft Bill does take it into account."

And regarding to marriage, what other important changes does it introduce?

"The patrimonial regime in marriage, as included in the preliminary draft bill, moves outside, for the better, with the traditional regulations that we have in the current code. Today, there are several conflicts in courts liquidating a matrimonial community property; number of people who acquire property with nominees so that they can be ruled out of the matrimonial community property, because the 1975 Code sets that everything that is acquired onerously in marriage belongs to both, unless one of the spouses says that it belongs to the other. So much so that more than one sale-purchase has been disguised behind a donation, so the spouse has no right.

"The draft bill gives all the options for the couple to agree and before marrying, agrees as they want their economic regime. What are we going to bring to the marriage? How are we going to organize it? And therefore consign it in an agreement that, even after we are married, can be modified. it is not something rigid. It is not limiting. As a couple, it gives you possibilities to define, take care of your own economy, and take care of your health. The divorce rate in Cuba is very high and situations of this nature have occurred in almost every family. After divorce, as a rule, there is a conflict: what is mine, what is yours, what do you leave me, and what do you take with you. The legislation gives the opportunity to define what we want and then, by mutual agreement, if we want it to change it. So what keeps marriage alive will never be properties or the fear to lose them."

There are also changes in the recognition of de facto union...

"In the 1975 code, marriage is recognized and, in its absence, a judicial process: the recognition of a non-formalized marriage union. There are people who live their whole life together but never married, they can even have children. If one of the two dies, the other only can inherit properties only if he or she goes to court and faces a process of recognition of non-formalized marital union to prove that they have been a couple and have had a stable and singular union.

"This code breaks out with this approach since marriage is a voluntary act of consent. If we did not give it in life, why are we going to give it after death. If we did not give it in peace why are we going to give it in war, because it can also be the case when there is a separation and there are patrimonial interests. Always for patrimonial interests because if not, it does not make any sense.

"This code recognizes marriage as the union between two people, without distinguishing sex, and recognizes the affective de facto union, which is made official before a notary, and will recognize rights, responsibilities and obligations to marriage different from de facto union. Each institution is going to have a personal content and a different patrimonial content."

Translated by Sergio A. Paneque Díaz / CubaSí Translation Staff
