

Legal Analysis of the Challenges of Child Support Obligations in the Context of Multiparenthood and the *Creceer Juntos* Law

Morena Yamileth Castro Trejo
Universidad de Oriente, El Salvador
morena.castro@univo.edu.sv

Article Info:

Submitted:	Revised:	Accepted:	Published:
Jul 23, 2025	Aug 18, 2025	Aug 30, 2025	Sep 5, 2025

Abstract

The incorporation of socio-affectivity in child upbringing, formally recognized by the *Creceer Juntos Law* (2023) in El Salvador, introduces new legal challenges in relation to maintenance obligations, which have traditionally been grounded in legally established biological kinship. This dogmatic legal and descriptive study examines current legislation, doctrinal perspectives, jurisprudence, and the opinions of family law specialists to assess the normative foundations and existing gaps concerning maintenance responsibilities of affinity parents with socio-affective ties or biological parents lacking legal recognition. The findings reveal the absence of specific regulations requiring such parents to assume maintenance obligations, creating uncertainty in the protection of children's rights. The study concludes by emphasizing the need for legal reform or, alternatively, judicial interpretation guided by the principle of the best interests of the child. Such measures are essential to adapt the Salvadoran legal framework to the realities of multiparental families and to ensure comprehensive protection of children's welfare.

Keywords: Maintenance Obligation; Multiparentality; Socio-Affective Bonds; *Creceer Juntos Law*; Best Interests of the Child; Family Law; Legal Reform; Jurisprudence

Introduction

The evolution of family structures has generated new challenges for family law concerning the regulation of child support obligations. Traditionally, in El Salvador, the obligation of child support has been grounded in legally recognized biological kinship, primarily conditioned by the filial relationship between parents and children, as established by the 1983 Constitution and the 1994 Family Code. However, the recent incorporation of socio-affectivity in the upbringing and development of children and adolescents, recognized under the *Crecer Juntos* Law since January 1, 2023, has opened a new legal landscape where the responsibility for child support extends beyond biological parents to include individuals with socio-affective bonds.

This phenomenon, known as multiparentality, implies the existence of more than one parental bond contributing to the upbringing, care, and comprehensive development of children (García, 2021). In this context, the Salvadoran legal framework still lacks clear and specific regulations addressing the child support obligations of step-parents who do not have formal legal recognition, generating uncertainty and challenges in the application of the law and in ensuring the best interests of children and adolescents, a fundamental principle in this matter (Ministry of Justice and Public Security, 2023).

The best interests of the child, internationally recognized in the Convention on the Rights of the Child (UN, 1989), serves as a guiding criterion in the interpretation and application of family law in El Salvador. However, the absence of specific regulations for multiparentality may limit the effective protection of the rights of children and adolescents in diverse social contexts, necessitating creative judicial interpretation and the proposal of legal reforms that address this emerging socio-legal reality.

This essay aims to analyze the current normative foundations in the country, evaluate the judicial and doctrinal recognition of socio-affective bonds in the context of child support obligations, and assess possible avenues to ensure comprehensive protection that considers family diversity. In doing so, it seeks to provide a solid foundation to address the legal challenges arising from multiparentality within the framework of the *Crecer Juntos* Law, strengthening family law to respond to the current demands of Salvadoran society.

Study Development

Background: This reference must begin with what is regulated in the Constitution of the Republic promulgated in 1983, in which the constituent, when addressing the economic responsibilities among family members, establishes in Article 33, in pertinent part: “The Law shall regulate the personal and patrimonial relationships between spouses and between them and their children.” Thus, it was regulated that the maintenance obligations owed to children subject to parental authority would be governed by secondary legislation, which in 1983 would be the Civil Code.

Furthermore, the Constitution of the Republic, in its Article 36, clearly states that “children born in or out of wedlock, as well as adopted children, have equal rights with respect to their parents.” It adds that it is the obligation of the latter—referring to the parents—to provide their children with protection, assistance, education, and security. With this, the Constituent emphasized the establishment of fundamental principles for making decisions regarding maintenance for children, underscoring the importance of setting new parameters of equality for children when determining maintenance quotas for them. It should be noted that this constitutional equality for children entitled to maintenance was of great significance, given that, at the time, secondary legislation still maintained the classification of children based on the nature of their filiation, that is, whether the children were legitimate, illegitimate, or natural. (Constituent Assembly, 1983).

The Civil Code of El Salvador of 1860 regulated the issue of maintenance from its entry into force until September 1994. During that period, the aforementioned body of law, starting from its Article 338, established the parameters under which maintenance could be demanded among family members. This article stipulated the following in its literal wording: “Art. 338.- Maintenance is owed: 1st to the spouse; 2nd to legitimate and illegitimate descendants with respect to the mother and their legitimate posterity; 3rd to legitimate ascendants and the illegitimate mother; 4th to natural children and their legitimate posterity; 5th to the natural father; 6th to legitimate siblings; 7th to illegitimate uterine siblings; 8th to the person who made a substantial donation, provided it has not been rescinded or revoked. Maintenance is not owed to the persons designated herein in cases where an express law denies them such right.”

From the cited civil article, it can be inferred that, at that time, maintenance was classified according to the person claiming it, and its regulation was highly rigid. The final

clause even adds that the persons listed in the numbered provisions may be denied maintenance if any provision in another law denies them such a right. Thus, at that historical moment, the idea of establishing maintenance obligations among individuals whose parental relationship stemmed from a socio-affective bond was far from being considered.

As of October 1994, the issue of maintenance, regarding its scope and the individuals involved in providing it, is regulated in the current Family Code, which will be addressed in greater detail in subsequent sections.

Multiparentality has historical roots, as it refers to both a legal concept and a social one. Since ancient times, when a father was absent or unable to exercise paternity, children were raised by other individuals. Likewise, when parents went to war or embarked on other endeavors, their children were raised by their mothers or a responsible person, and in their absence, by relatives by affinity. When speaking of the family, its composition was very different. The first family emerged when humans realized that, for their survival, they needed to form clans or tribes. The mother did not directly know who the father of her child was; rather, she took charge of the upbringing, thus establishing the primary role of women in raising children. This role evolved into what we know today. However, it is sufficient to observe how paternity functioned in different cultures. The scientific journal (Morales, 2015) provides a brief summary, stating the following:

In Egypt: The most powerful classes, starting with members of the royal family, practiced polygamy, although the common people were content with a single wife. Nobles and princes married incestuously, designating the chosen sister as the primary or principal wife.

In Babylon: Babylonian morality seems entirely foreign to our current customs, as many of its aspects border on what we would now consider depravity. For example, according to Herodotus, no woman was to enter marriage a virgin, and it was required that she have, at least once in her life, sexual relations with a foreigner in the temple of Venus. Marriages were arranged between parents and were accompanied by an exchange of gifts, which, in some cases, amounted to a straightforward purchase.

In Assyria: The family was organized under a patriarchal regime, and one of its most important objectives, given the country's eminently warrior nature, was the

perpetuation and increase of the population. Laws and morality were designed to promote a higher number of births.

In Israel: In the early stages of civilization, when the form of political organization did not extend beyond the tribe, the family structure shared common elements with other Eastern peoples of that era. According to the earliest biblical references, marriage could become an almost perfect union and was often arranged as a form of purchase.

In Persia: The need to increase the population prevailed, and consequently, situations that promoted this goal were protected. The family was regarded as one of the holiest institutions.

In China: The Chinese family was characterized by the integration of husband, wife, and children, who lived with the husband's parents, grandparents, and uncles. The wife owed obedience to her husband and mother-in-law, particularly in domestic matters. The elders were the true heads of the family.

In Greece: Discussing Greece requires distinguishing between the very different civilizations of Sparta and Athens. The former based its pride and power on military greatness, training individuals solely for that purpose.

Ancient and Modern Family Models: Various types of family organization are presented, from consanguineous, promiscuous, or patriarchal models in ancient cultures to modern forms such as single-parent, biparental, homoparental, and multiparental families.

Based on Article 33 of the Constitution of the Republic, it is mandated that the law shall regulate the personal and patrimonial relationships between spouses and between them and their children, establishing reciprocal rights and duties on equitable grounds. According to these provisions of the constituent, from the primary law—the Constitution—the obligation of parents toward their children regarding their upbringing and development has been made clear. In other words, the maintenance obligation of parents toward their children is a constitutional matter. Since the entry into force of the constitutional norm, these responsibilities have been an unavoidable obligation for parents. In compliance with this constitutional law, the Family Code was later enacted, a legal body that included an entire title dedicated to maintenance obligations.

Since October 1994, the Family Code has regulated all aspects related to maintenance, including its scope. In Article 248, it defined those subject to maintenance

obligations, making it clear that this matter involves spouses among themselves and, with respect to children, designates ascendants and descendants up to the second degree of consanguinity as responsible parties, later including siblings. Thus, the Family Code regulated the family in this regard.

In this regard, the Family Chamber of the Western Section, through a ruling dated July 3, 2015, concerning maintenance obligations, stated that the concept of maintenance obligation must be clearly understood. It cited: “In the Family Law Manual (Center for Research and Training, Judicial Reform Project II, 1st Edition, 1994, p. 637), it is established that ‘the obligation to provide maintenance has a profound ethical and legal significance, as human beings come into the world unable to fend for themselves due to their inherent vulnerability.... Human solidarity imposes a duty to protect both life, as an essential right of the person, and their survival.’ Within the family—continues the manual—there exists a deep connection of strength and mutual help that results in the provision of maintenance. In this compilation—the Chamber continues—it cites the Family Law Manual by author Somarriva, who states on this point: ‘The right of a person to demand maintenance from another, with whom they are generally linked by kinship, has a solid foundation in equity—’.” It is notable that the Second Instance Magistrates in the aforementioned ruling base the right to request maintenance on a legally established kinship. (Family Chamber of the Western Section, 2015)

Beyond what has been stated, the legal regulation of maintenance obligations in the Family Code does not extend to individuals who, without a legal bond, may fall within the circle of those responsible for the upbringing and development of girls, boys, and adolescents, specifically in the case of those formerly referred to as stepparents—now affinity parents. This issue has been addressed in new trends within the jurisdiction of childhood and adolescence since the entry into force of the *Creceer Juntos* Law.

At this point, it is important to recall that the Convention on the Rights of the Child, in its Article 27, paragraph 1, states that States Parties recognize the right of every child to a standard of living adequate for their physical, mental, spiritual, moral, and social development. Furthermore, paragraph 2 of the same article establishes that parents or other persons responsible for the child have the primary responsibility to provide, within their abilities and financial means, the living conditions necessary for the child’s development. (United Nations Organization, 1989).

All the principles contained in the Crecer Juntos Law are rights that are applied in an integrated manner with what is regulated in the Family Code and the Family Procedural Law. For maintenance obligations, the provisions of the Family Code are applied through the family process outlined in the Family Procedural Law, with variations applicable under the Crecer Juntos Law. Thus, if this law recognizes the right of affinity parents (formerly stepmothers or stepfathers) to assume personal care of their partner's children, it is valid to question the limits of this right and, moreover, whether these rights—as often occurs in legal science—also entail responsibilities, such as maintenance obligations for girls, boys, or adolescents.

The issue lies in determining the normative basis within the national legal framework that can be invoked to support the imposition of a maintenance quota under multiparentality, involving more than one father or mother, as is currently practiced.

The constant evolution and transformation of law in general, and with it the structures of families, have allowed the emergence of new figures in the legal family sphere. The Family Code in force in El Salvador since October 1, 1994, in its Article 206, strictly designates parents legally constituted as responsible for children under eighteen years of age. It grants parents the duty to provide upbringing, cohabitation, moral and religious formation, education, correction, and guidance to their children subject to parental authority, among other responsibilities. (Legislative Assembly, 1994).

Despite the above, Article 216 of the same code deemed it prudent to include the possibility that, in cases of extreme urgency, parents could jointly agree to entrust such care to a trusted person during the duration of the urgency. The same article allows the judge, in cases where it is their responsibility to decide who should be entrusted with the personal care of a child subject to parental authority, to assign it to another person if neither parent is deemed suitable for such care.

More recently, since January 1, 2023, with the entry into force of the Crecer Juntos Law for the Comprehensive Protection of Early Childhood, Childhood, and Adolescence—hereinafter referred to as the Crecer Juntos Law—the legislator, in Article 2, when developing a series of concepts applicable to the interpretation and application of the law, included the term EXTENDED FAMILY. This legal institution was described by the legislator as encompassing “members of the extended family by consanguinity or affinity

(uncles, grandparents, siblings, godparents, and others with socio-affective bonds).” (Legislative Assembly, 2023).

In line with the above, Article 46 of the Crecer Juntos Law, referring to the right of children and adolescents to grow and develop within a family, establishes that “Girls, boys, and adolescents have the right to grow, live, develop, and be raised with their mother, father, and family, including persons with whom they have built socio-affective bonds or ties.”

Furthermore, the Crecer Juntos Law, in Title V concerning protection measures, in Article 225, regulates the possibility of ordering placement in an extended family for children and adolescents. This is understood to include a relative within the fourth degree of consanguinity or second degree of affinity, or persons with whom they have proven socio-affective bonds. The new regulations on children and adolescents establish that those who establish socio-affective bonds may assume personal care of girls, boys, and adolescents.

Thus, the theory of multiparentality is developed in light of the aforementioned provisions, implying that other persons, not only legally established parents, assume active roles in the upbringing of girls, boys, and adolescents. However, the current legal framework does not contemplate these parental figures without the possibility of formal legal recognition, such as in the case of affinity parents—a situation that occurs frequently in practice, where their names do not appear on the identification documents of the child or adolescent. This creates regulatory gaps and challenges in the comprehensive protection of rights.

The issue becomes more complex when addressing the question of the limits of the rights granted to an affinity father or mother to care for a child who belongs to another person, and even more so, what obligations they acquire. In other words, is their responsibility limited to material care? And if the biological parent loses custody rights and definitively withdraws from the child’s life, can maintenance be demanded from a person who only has a socio-affective bond with the child to cover their expenses?

One way to resolve conflicts between biological and social parenthood—those who have acted as parents without being so, also referred to as “social parents”—would be to recognize the existence of multiparentality, acknowledging socio-affective filiation alongside biological filiation.

But what do we understand by multiparentality? This term may have different scopes, as the academy specifies. In one sense, it recognizes filiation generated by a socio-affective bond alongside that based on biological ties, which entails extending the legal status of parent, with all its effects, to more than two persons simultaneously, breaking the paradigm of biparentality. Alternatively, it may have a broader scope, referring to the possibility of reconciling various parental positions with respect to the same child through the recognition of certain powers or faculties among different fathers and/or mothers, though with varying degrees of importance (e.g., attributing certain decision-making powers related to the child's development, assuming obligations such as maintenance, among others). (López, 2023).

Pluriparentality, or multiple parenthood, as the name suggests, consists of a filial bond composed of more than two persons, at least three, involving procreational intent. This allows for the possibility that a child may have two or three mothers (gestational, genetic, and legal) or one or two fathers (genetic and legal). (Guridi Rivano & Hevia Hevia, 2023)

The recognition of socio-affective bonds incorporated in the *Crece Juntos* Law for the Protection of Early Childhood, Childhood, and Adolescence could lead to a judicial determination of filiation with respect to two fathers (both male) or maternity with respect to two women (legal progenitor and socio-affective); or it could allow the effects derived from filiation to apply to the legal father or mother, with the biological father or mother sharing only some of those effects. This second solution would be more appropriate in cases of conflict between both filiations (biological and socio-affective), although it would affect the child or adolescent, requiring an analysis of each specific case.

The Constitution of the Republic, in its Article 36, states that “children born in or out of wedlock and adopted children have equal rights with respect to their parents,” adding that it is the obligation of the latter—referring to parents—to provide their children with protection, assistance, education, and security. With this, the Constituent emphasized the establishment of fundamental principles for making decisions regarding maintenance for children, underscoring the importance of setting new parameters of equality for children when determining maintenance quotas. It should be noted that this constitutional equality for children entitled to maintenance was of great significance, given that secondary legislation at the time still maintained the classification of children based on the nature of

their filiation, i.e., whether they were legitimate, illegitimate, or natural. (Constituent Assembly, 1983).

The current legal framework that underpins the regulation of socio-affectivity is primarily found in the Convention on the Rights of the Child, in its Article 27: “1. States Parties recognize the right of every child to a standard of living adequate for their physical, mental, spiritual, moral, and social development. 2. Parents or other persons responsible for the child have the primary responsibility to provide, within their abilities and financial means, the living conditions necessary for the child’s development.” (United Nations Organization (UN), 1989).

From the above, it can be inferred that the Convention recognizes the obligation of persons with affective bonds toward the child or adolescent to take responsibility for their economic subsistence, among other duties. While it does not explicitly establish multiparentality, it refers broadly to any type of affective bond, which allows for the inclusion of affinity parents or biological parents who are not listed as such on the child’s birth certificate.

Further on, in paragraph 4 of the same article of the Convention, it addresses the responsibility to provide maintenance to children and adolescents by those who have some form of responsibility toward them, stating literally: “4. States Parties shall take all appropriate measures to secure the payment of maintenance by parents or other persons who have financial responsibility for the child, whether they live in the State Party or abroad...” As can be seen, this paragraph does not explicitly refer to multiparentality but uses a broader concept by stating “or other persons who have financial responsibility for the child.” This can be interpreted in light of the Family Code, which in its Article 248 explicitly lists those subject to reciprocal maintenance obligations, referring to “spouses, ascendants, and descendants up to the second degree of consanguinity, and siblings.” Nevertheless, based on Article 27 of the Convention, maintenance can be demanded in cases of multiparentality from both biological parents and socio-affective parents.

Socio-affectivity is also regulated in the Crecer Juntos Law, primarily in Article 2, in the definition of extended family, which includes persons with socio-affective bonds as part of it. Likewise, Article 46 regulates the right to grow and develop within a family, expressly stating in paragraph 1: “Girls, boys, and adolescents have the right to grow, live, develop, and be raised with their mother, father, and family, including persons with whom

they have built socio-affective bonds or ties. They may only be separated from them in cases where it is strictly necessary to preserve their best interests in accordance with the Law.” (Legislative Assembly, 2023)

Thus, it has been established that socio-affectivity is regulated within the Salvadoran legal framework. However, there is no specific regulation of multiparentality as such, nor of the legal effects derived from it, including the maintenance obligation of those who hold the status of biological parents but are not listed as such on the child’s birth certificate, or of those who, without being biological parents, have a socio-affective bond with the child or adolescent, whether as current or former affinity parents.

Conclusion

The incorporation of socio-affectivity in the upbringing and development of children and adolescents, recognized by the *Crecer Juntos* Law since 2023, represents a significant advancement in the legal recognition of new forms of kinship that generate maintenance obligations beyond the traditional biological bond.

The current normative framework in El Salvador lacks specific provisions regulating maintenance obligations for affinity parents with socio-affective bonds, which creates legal gaps and uncertainty in the practical application of family law and may affect the effective protection of the best interests of the child.

The principle of the best interests of the child, enshrined in the Salvadoran Constitution and in international instruments such as the Convention on the Rights of the Child, must guide the interpretation and evolution of legislation to ensure maintenance responsibilities in contexts of multiparentality, guaranteeing the comprehensive well-being of children and adolescents.

It is necessary to promote legal reforms or develop innovative jurisprudential interpretations that expand the concept of maintenance obligations, including socio-affective parents and biological parents not formally recognized, to align the Salvadoran legal framework with contemporary social realities and strengthen the legal protection of children and adolescents.

Recommendations

Promote specific legal reforms that expressly include maintenance obligations for parents with socio-affective bonds, adapting the Salvadoran legal framework to new family configurations and thereby ensuring clear normative support for this figure.

Encourage training and awareness-raising for legal operators (judges, public defenders, lawyers) on multiparentality and the importance of the best interests of the child, to foster judicial interpretations that recognize and protect socio-affective bonds in maintenance obligations.

Strengthen jurisprudence through innovative rulings that recognize the maintenance responsibility of affinity parents or biological parents not legally recognized, using the principle of the best interests of the child as a basis for expanding the interpretation of maintenance obligations.

Promote educational and social awareness campaigns that highlight multiparentality and the importance of recognizing socio-affective bonds in upbringing, contributing to creating a social and family environment that facilitates the effective application of new legal provisions.

Develop complementary research and studies that delve into the social realities of multiparental families in El Salvador, to provide empirical evidence that guides the formulation of relevant and updated public policies and legislative reforms.

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