Lawmakers in Mexico’s Congress have introduced a bill which seeks to legalize abortion on demand up to 12 weeks gestation, and later in cases of health of the mother and when the unborn child suffers from a severe disability.

A bill to legalize abortion up to 12 weeks was introduced on October 23rd in the Chamber of Deputies, the lower house of Mexico’s Congress. The bill has been referred to the Commission of Justice and the Commission of Gender Equality in the lower house for consideration and also to the Commission on Human Rights and the Commission on Health for their opinions on the legislative proposal.

On December 21, the Commission on Human Rights became the first committee to approve the bill, issuing a favorable opinion on the initiative. The bill is set to be considered by each of the other commissions in turn later this year.

The bill’s author, congresswoman Lorena Villavicencio Ayala, is from the National Regeneration Movement (Morena) party, the new majority party that was ushered into the Mexican Congress last September following the national elections in 2018.

Currently, abortion is by and large illegal in most all of Mexico. Federal law in the country prohibits abortion except in cases of rape or to save the life of the mother. However, Mexico has a federal system of government similar to that of the United States, and several Mexican states allow for exemptions in other cases as well.

About half of states in Mexico permit abortion in cases of health of the mother, or in cases of
fetal disability, or both. And two states, Michoacán and Yucatán, allow abortion for socioeconomic reasons. In 2007, Mexico City became the first and only jurisdiction in the country to legalize abortion on demand up to 12 weeks gestation. Mexico’s Supreme Court later upheld Mexico City’s abortion law in 2008.

If passed into law, Villavicencio’s bill would amend Mexico’s federal penal code to legalize abortion on demand up to 12 weeks nationwide. It would also permit the direct termination of the life of an unborn child in cases where the mother’s health is at risk or when the child suffers from a severe disability.

The legislative proposal would also seek to remove legal penalties on persons who intentionally abort their unborn child. Currently, Mexico’s penal code imposes a penalty of six months to five years in prison for anyone who voluntarily and intentionally has an abortion. The new bill would reduce this sentence to only 3–6 months of community service and would prohibit states from imposing prison sentences on anyone who has an intentional illegal abortion.

Moreover, the bill would further amend federal law to state that “the denial or postponement of abortion without risk” and “the forced continuation of [ ] pregnancy” amount to “institutional violence against women.” If adopted, the revised statutes could allow the courts to interpret the law more broadly in the future by allowing abortion in a wider array of circumstances than what even the abortion bill proposes.

If the bill passes in commission, it will proceed to the full Chamber of Deputies for a vote. If passed in the Chamber of Deputies, the bill would subsequently proceed to the Senate for consideration. If passed by both houses of Congress, the bill would be sent to Mexico’s new leftist President, Andres Manuel Lopez Obrador, for either signature or veto.

Even if a federal bill legalizing abortion were passed into law, however, state governments would have to amend their local penal codes accordingly before the law would be able to take effect in those states. States that are opposed to abortion could presumably attempt to challenge the constitutionality of the bill through the courts.

While the legislative process has only just begun, the prospect of an abortion bill being passed by the current Mexican Congress are greater than ever before. Many Mexican citizens—fed-up with perennial, deep-seated corruption in the government, soaring homicide rates, and the inability of the previous administration to deliver on promises to grow the economy and increase household income—delivered a landslide victory to the left-
leaning Morena party in the 2018 national elections.

Morena’s candidate for president, Lopez Obrador (who is often referred to by his initials, “AMLO”), won 53% of the electorate in a three-way race, defeating his nearest opponent by 30 percentage points. The party now occupies a majority of seats in the lower house of Congress and the largest number of Senators of any single party in the Senate. Morena also now has control of 22 of the 32 state-level legislatures.

Morena has not officially taken a position on abortion. However, AMLO’s new Secretary of Interior, Olga Sánchez Cordero, announced last year that the new administration would seek to legalize abortion nationwide up to 12 weeks, according to El País. The Secretary of the Interior is a cabinet-level office in the Mexican Government that deals with domestic affairs and is responsible for presenting bills proposed by the president to Congress.

Additionally, on “International Depenalization of Abortion Day” last September, approximately 30 Morena lawmakers held a press conference vowing to legalize abortion in Mexico. And indeed, the current abortion proposal being considered in the Chamber of Deputies was introduced by none other than a Morena lawmaker. According to congresswoman Villavicencio, the project to legalize abortion in the country “forms part of the agenda of Morena.”

It is unclear how many lawmakers in the Morena party and other pro-abortion politicians would vote in favor of a bill legalizing abortion. But if the recent vote of approval of the bill in the Commission on Human Rights in December is any indication, a majority of Morena lawmakers on the Commission voted in favor of the initiative. And while the Commission’s vote may not be indicative of the party’s sentiments on the issue overall, and while many Morena politicians are in fact pro-life, pro-abortion lawmakers have felt emboldened by the presence of a new left-leaning majority in Congress and have pushed hard for legalization.

Since the new Congress convened last September, at least three separate proposals to legalize abortion have been presented in the Chamber of Deputies. One such initiative won the backing and support of Morena party member and president of the Commission on Health, Miroslava Sánchez Galván. In the Senate, a number of Senators have also thrown their support behind a proposal to legalize abortion by amending the country’s constitution.

And it is not only politicians in the Morena party which are pushing for abortion. According to Villavicencio, the abortion bill before the lower house has support from the governing coalition Labor Party as well as the opposition Citizens’ Movement party. One of the
legislative proposals in the lower house was introduced by two congresswomen from the opposition Party of the Democratic Revolution. On the flip side, lawmakers from the Social Encounter Party, a socially conservative and pro-life party part of AMLO’s own coalition, are likely to oppose any legislative efforts to legalize abortion.

It is unclear whether President Lopez Obrador would sign a bill to legalize abortion on demand. During the 2018 campaign, AMLO had maintained that the legal status of abortion should be left to a public referendum to decide.

In attempts to sell lawmakers on the abortion bill, congresswoman Villavicencio has falsely argued that Mexico is obligated by its Constitution and by international treaties to legalize abortion.

“[T]he international commitments that the Mexican state has signed, to assure women the full enjoyment of human rights, obligates it to take measures to guarantee access to legal abortion,” Villavicencio stated on the floor of Congress when she presented the abortion bill in the Chamber of Deputies.\(^1\)

Villavicencio points to the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belem do Para”) as two international treaties that Mexico has signed which supposedly “obligat[e]” Mexico to legalize abortion. Article 1 of the Mexican Constitution requires that Mexican law comply with “international treaties which the Mexican State is a part.”\(^2\) As a party to both treaties, Mexico would have to amend its law on abortion accordingly, so the argument goes.

However, neither of the Convention on the Elimination of All Forms of Discrimination against Women nor the Convention of Belem do Para in any way require states to legalize abortion to any extent. Neither treaty mentions abortion and no entity authorized to interpret these treaties have asserted a right to abortion in them. Neither have subsequent agreements nor have subsequent state practice imposed an obligation on states to legalize abortion.

Villavicencio argues that Article 12 of the Convention on the Elimination of All Forms of Discrimination against Women, which guarantees “access to health care services, including those related to family planning,”\(^3\) includes access to abortion and, as such, she claims that legal restrictions on abortion “are not compatible with the application of the treaty.”\(^4\) However, the Programme of Action from the 1992 International Conference on Population
and Development, an international consensus agreed to by 179 nations, specifically excludes abortion from “family planning,” stating “In no case should abortion be promoted as a method of family planning.” Moreover, no international treaty which Mexico has signed defines abortion as a family planning method.

Villavicencio also points to statements and comments issued by the Commission on the Elimination of Discrimination against Women (CEDAW), including General Recommendation No. 35 which stipulates that the “criminalization of abortion” is a form of “gender-based violence” under the Convention. She also points to CEDAW’s concluding observations to Mexico’s Ninth Periodic Report which calls on the Government to “increase efforts to accelerate the harmonization of federal and state laws and protocols on abortion, with a view to guaranteeing access to legal abortion.”

However, CEDAW, like many other U.N. treaty-based bodies, has long acted contrary to its mandate by invalidly attempting to reinterpret an international human rights treaty as requiring states to legalize abortion. Contrary to what CEDAW has attempted to claim, the Convention cannot be interpreted to define the denial of access to abortion as “gender-based violence” and cannot be interpreted to require state to legalize abortion.

Indeed, the Convention does not grant CEDAW the authority to obligate any state to accept its interpretation of the treaty. CEDAW is only able to provide states with non-binding recommendations for complying with their obligations under the treaty. Thus, any comments or statements—including General Recommendations or concluding observations—which contravene the valid methods of interpretation of treaties under international norms are manifestly invalid and can be ignored by states parties.

Villavicencio also attempts to argue that Article 4 of the Mexican Constitution, which states that “Every person has the right to decide in a free, responsible, and informed manner on the number and spacing of their children,” requires the legalization of abortion. However, as previously mentioned, the international consensus of states holds that abortion is not to be promoted as a family planning method. Moreover, the right of couples to family formation does not include a right to kill. The unborn child is no less human than a person who is born. Just as it is illicit to kill a child born, it is illicit to authorize the killing of an unborn child through abortion.

[2] Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 1, ¶1, as amended, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Última Reforma DOF August 27, 2018) (Mex.).


[8] Constitución Política de los Estados Unidos Mexicanos [C.P.], art. 4, ¶2 as amended, Diario Oficial de la Federación [DO], 5 de Febrero de 1917 (Última Reforma DOF August 27, 2018) (Mex.).

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