Written submission from Dr Francis Sansbury (ANI0314)

Summary.
- I wish to respond to your question: What are the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland? How should these be reconciled to the UK’s devolution settlement?
- I argue that the UK government does not have international obligations regarding abortion in Northern Ireland.
- I note the difficulties with defining a “fatal foetal abnormality” as a ground for abortion.
- Even if it did have any international obligations, the UK government should leave those to the Northern Ireland Assembly to resolve.

1. I wish to respond on the grounds of human rights, and the culture of Northern Ireland and devolution.

2. Firstly, I note your comments about report from the UN Committee on the Elimination of Discrimination Against Women. It concluded that the rights of women in Northern Ireland were being violated by restrictions on access to abortion. The UN Convention on the Elimination of Discrimination Against Women (CEDAW) defines the remit of this committee. At no point does the convention mention abortion. I note that therefore the committee would appear to be acting outside its remit. The committee does not have any legal standing to read any right to abortion into CEDAW. The committee's views do not create any human right to abortion. This does not create an international obligation.

3. You also comment that in a recent Supreme Court case, “a majority of the judges stated their view that the laws are incompatible with Article 8 of the European Convention on Human Rights—on respect for private and family life—in cases of fatal foetal abnormality, rape and incest.” These comments, though, are non-binding. They do not create an international obligation.

4. I also note that the only way to prove that a foetal abnormality is fatal is to allow nature to take its course and for the infant to die in the womb. Doctors can often be wrong about predictions of fatal foetal abnormalities, so most of us are cautious about saying whether something is fatal or not. If “fatal foetal abnormality” became a ground for abortion, it would be impossible to prove, because the act of abortion is fatal for the infant.

5. Northern Ireland has a distinctive culture, which is a reason why the Abortion Act 1967 did not apply to it. Research in 2017 indicated that 100000 people are alive in Northern Ireland who would not be had Northern Ireland adopted the 1967 Act. The Advertising Standards Authority upheld the quality of this research. A recent poll (released 17/10/2018) carried out by ComRes said that 64 % of people in Northern Ireland said that any change in the law on abortion in Northern Ireland should be an issue for the people of Ireland and their elected representatives. This included 66 % of women and 70 % of 18-34 year olds. Northern Ireland wishes to keep its own approach to the issue of abortion.

6. Finally, Northern Ireland has a devolved legislature. The fact that the Northern Ireland Assembly is currently suspended does not alter the fact that it would be constitutionally inappropriate for a Westminster committee to interfere with a decision that the people of Northern Ireland wish to decide for themselves. I refer to SNP MP Deirdre Brock's comments in a House of Commons debate on 05/06/2018: “Likewise, the issue of abortion in Northern Ireland is a devolved matter and is an issue for the people of the Northern Ireland and the people they elect to the Assembly. It is a matter devolved and, frankly, it matters not a jot whether the decisions made at Stormont, when it is sitting, are agreeable to Members sitting here. That is the point of devolution, a point that some Members of this place have been spectacularly slow to appreciate at times. The decisions of devolved Administrations are taken for reasons that people in those devolved nations understand from their point of view, and they are taken using evidence that the people, politicians and policymakers of those devolved nations consider important.”

7. You asked: What are the responsibilities of the UK Government under its international obligations for taking action to reform abortion law in Northern Ireland? How should these be reconciled to the UK’s devolution settlement? I argue firstly that the UK does not have any international obligations, for the reasons above, and that secondly, even if it did, it should leave resolution of those issues to the Northern Ireland Assembly.