



**Office of the Independent
Special Interlocutor**

for Missing Children and Unmarked
Graves and Burial Sites associated
with Indian Residential Schools

**Bureau de l'interlocutrice
spéciale indépendante**

pour les enfants disparus et les tombes
et les sépultures anonymes en lien avec
les pensionnats indiens



**National Centre for
Truth and Reconciliation**

UNIVERSITY OF MANITOBA

February 17, 2023

The Honourable Marc Miller
Crown Indigenous Relations and
Northern Affairs Canada
Ottawa, ON., K1A 0A6

Dear Minister:

Thank you for the opportunity to provide feedback on the Technical Arrangement between the Government of Canada and the International Commission on Missing Persons.

Reviewing the Arrangement in detail has only deepened our concerns.

In the attached chart, we have highlighted specific concerns over numerous clauses in the Arrangement, including vague and contradictory language, duplication of other Mandates, disrespect for Indigenous knowledge and expertise, and a failure to adequately address the risks of harm to Indigenous Peoples.

It is apparent that the Arrangement was negotiated by two entities, Crown Indigenous Relations and Northern Affairs Canada (CIRNAC) and International Commission on Missing Persons (ICMP), that do not have the cultural competency needed for this sensitive work and which should not have developed the proposed engagement process in isolation from Indigenous Peoples.

We look forward to discussing these concerns with you further when we meet.

Kimberly Murray,
Independent Special Interlocutor
Office of the Special Interlocutor for Missing
Children and Unmarked Graves and Burial Sites

Stephanie Scott,
Executive Director
National Centre for Truth and Reconciliation



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Missing from the Arrangement

The Arrangement does not express any explicit requirement that the engagement process be carried out in a trauma informed way.

There is no recognition of the central importance of Survivors. The only references to Survivors in the actual description of the engagement process is at 8.4.1 as part of a list of people who might be invited to the engagement processes and earlier in a list who might be members of an Indigenous organization.

There are no provisions for long-term ownership, control, access, or protection of information gathered in the course of the engagement process. Nor is there an acknowledgement that the process must be consistent with the right of free, prior and informed consent. For example, because there is no limitation on the scope of information being gathered, the engagement process might include statements from Survivors that should form part of the historical record of the residential school in question. Vague references to “deployment” of ICMP experts to assist in investigations raises questions about DNA sampling potentially taking place under the terms of this Arrangement, despite significant concerns over the lack of appropriate safeguards.

This Arrangement excludes any mention of the appointment and Mandate of the Independent Special Interlocutor. There is no acknowledgement of the importance of working collaboratively with existing Indigenous-led bodies who are working on this already [National Centre for Truth and Reconciliation (NCTR), Office of the Independent Special Interlocutor (OSI), and National Advisory Committee on Residential Schools, Missing Children and Unmarked Burials (NAC)]. Oddly, the Arrangement mentions the National Advisory Committee in the definitions section but then does not mention them in the body of the Arrangement. The scope of work overlaps with the Mandates of the Independent Special Interlocutor and the National Advisory Committee which at worst, implies a purposeful undermining of their work, and at best, demonstrates a lack of coordination between and within federal Ministries.

At best, the “plan” is a poorly attempted copy of the Truth and Reconciliation Commission of Canada’s (TRC) process, NCTR, NAC and OSI strategies and plans already underway. It uses pieces of each in an inappropriate and harmful way.



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Technical Arrangement	
Section:	Comment(s):
1. Purpose	
2. Definitions	
3. Contacts	
3.1. PWGSC Arrangement Authority	
3.2. CIRNAC Project Authority	
3.3. ICMP	
4. Arrangement Term	The contract term overlaps with the Independent Special Interlocutor's Mandate. The Independent Special Interlocutor will be delivering an Interim Report in June 2023. Under this Arrangement, the report with recommendations is due June 2023, after the Independent Special Interlocutor's Interim Report will have been delivered. This overlapping timeframe creates the possibility of inconsistent recommendations.
5. Copyright	
6. Applicable Laws	
7. Amendments, Cancellation and Termination	90 day cancellation notice period seems excessive. Both parties can mutually terminate. Given the International Commission on Missing Person's (ICMP) commitment to transparency – and the duty of Canada to consult and collaborate with Indigenous Peoples – the total lack thereof should be compelling grounds to terminate this Arrangement and create one that is collaborative.
8. Suspension of the Work	This is a clear option for Canada. They can suspend work until proper consultation with Indigenous leadership and organizations is completed.
9. Conduct of the Work	ICMP does not have the necessary cultural competence, which impacts its ability to conduct the work appropriately.
10. Confidentiality	There is no reference to protecting the confidentiality of Indigenous individuals, families and communities and no inclusion of the possibility that individuals, families or communities may disclose information to the ICMP that they would not want shared with the Government of Canada.



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	<p>Furthermore, vague language in the Arrangement (such as the option to “deploy subject matter experts” in 3.6) leaves open the possibility that the ICMP may engage in more invasive activities such as DNA sampling without appropriate safeguards in place.</p> <p>Relatedly, it is unclear what would constitute information developed by a Participant without use of the information by the other Participant (which constitutes an exemption to the confidentiality requirements under 10(4)). For example, if at an engagement session a Participant suggests a meeting with a Survivor, Indigenous community member or Indigenous leader not in attendance, would this fall under this exemption?</p> <p>The wording “on behalf of Canada” does not demonstrate independence and objectivity. Everything in this section supports ICMP as a service to Canada. How can ICMP hold a “state” accountable under human rights and legal obligations if they are solely beholden to them?</p>
11. Financial Arrangements	Accountability is questionable in this section.
11.1. Basis of Payment	
11.1.1. Firm Price	
11.1.2. Travel & Living Expenses	
11.2. Method of Payment – Payments	Who and what determines “success”? How is “success” evaluated? There is no inclusion of Indigenous oversight in this process. “Others” are determining what is best and “successful” for Indigenous Peoples.
11.3. Invoicing Instructions	
11.4. Payment Period and Interest on Overdue Accounts	
12. Acceptance of the Work	
13. Dispute Resolution	



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14. Accounts and Audit	
15. International Sanctions	
16. Entire Agreement	Failure to reference the United Nations Declaration Act and international treaties in the Arrangement is concerning given the assertion in this section that “there are no terms, covenants, representations, statements or conditions binding on the Participants other than those contained in the Arrangement.”

Annex A Statement of Work	
Section:	Comment(s):
SW1.0 Title	Throughout the document, the description of the intended outcome is vague and inconsistent. In section 3.1, it states, “The purpose of this Arrangement is to engage with Indigenous communities on options relating to the identification and repatriation of missing children.” In section 9.4.3, it states that the ICMP will provide recommendations to support Canada’s development of a framework for identification and repatriation. Elsewhere, the Arrangement refers to development of a national strategy. However, in the title of this project, the strategy to be developed is an “engagement strategy.” Furthermore, the title only refers to the development of this engagement strategy, not its implementation, which is the substance of the Arrangement.
1.1	The title only references service to Canada for missing children. There is no reference to “Indigenous” or Indian Residential Schools (IRS) in the title. No connection, no accountability.
SW2.0 Background	
2.1	
2.2	The way this is written does not acknowledge the role of Canada and the churches in creating conditions that contributed to or caused the deaths of the children who attended Indian Residential Schools. It is harmful, disrespectful and revisionist to write about the children who died while in the care of the state and churches without acknowledging this.



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	It fails to reference that there are still records and archives that are locked by Canada and the churches, and not yet accessible to communities searching for missing children.
2.3	
2.4	This should also reference the number of IRS and Indian Day Schools not included in the Settlement Arrangement and the other sites where children went missing and/or died.
2.5	
2.6	Canada has information that is not accessible to communities.
2.7	The way that the context has been framed in this paragraph is also harmful, disrespectful and revisionist. As drafted, it feeds into the inaccurate view that the work to recover the missing children only began recently, when the TRC dedicated an entire Volume to Unmarked Burials and Missing Children and documented the efforts of Survivors, Indigenous families and communities to locate, commemorate and protect unmarked burials that had been taking place for decades. It also fails to mention that Canada has not implemented TRC Calls to Action #71-76 since issued in 2015.
2.8	Is this an accurate statement? Communities are not clear on the options available to them and the vast majority at least, have not yet made a decision on whether they would want to exhume.
2.9	This is the Independent Special Interlocutor's Mandate and there is no reference to the work she is doing or progress to date.
2.10	The jurisdictional complexity is also an area that ICMP will need to learn about in order to complete this project successfully. The short timeframe for this work will likely make this difficult. This is also within the Independent Special Interlocutor's Mandate and no reference.
2.11	It is not clear who would be part of such a "cohesive approach." Is this meant to refer only to a cohesive approach across federal departments?
2.12	
SW3.0 Objective	
3.1	Unclear why the ICMP, which has no prior experience working with Indigenous Peoples within Canada, would be an appropriate organization to lead an open-ended engagement process with Indigenous Peoples, if that is the intended objective. There is also a lack of clarity in the document whether the engagement process is meant to create an opportunity for Indigenous communities to present their perspectives and share the knowledge of their



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	<p>experiences, or whether the purpose is for Indigenous communities to hear from the “experts” from ICMP. (See for example 3.5)</p> <p>This statement is also inaccurate. There are other international organizations with expertise in working with Indigenous Peoples.</p>
3.2	No reference to cultures and traditions – recognition of the importance of ceremony and the role they have regarding the “considerations”.
3.3	<p>Unclear why ICMP is well-positioned to provide recommendations on a national strategy to address the identification and repatriation of missing children without a deep understanding of the political, legal and jurisdictional realities facing Indigenous communities leading search and recovery efforts across Canada.</p> <p>No reference to the Independent Special Interlocutor’s Mandate.</p>
3.4	<p>Unclear what is meant by “gauge the potential DNA testing of children’s remains and their identification by kinship mapping”. In addition to interest in or need for such testing, there are crucial questions of Indigenous laws, protocols and values and the safeguards necessary to ensure that they are respected and upheld. Any engagement or findings that fail to consider Indigenous laws, protocols and values will cause direct harm and constitute a profound disservice to these communities.</p> <p>This section is drafted in a way that demonstrates a lack of cultural competency. It gives the impression that the decision around DNA testing has already been made by Canada and ICMP and the intent is merely to gauge its potential by objectifying the missing children and their families.</p> <p>“...for future federal approach for repatriation...” is a colonial reference that provides a clear message that Canada will decide and make the rules for Indigenous Peoples. Indigenous Peoples have no say.</p> <p>There are necessary considerations to laws, process, protocols and protections – all of which are part of the work of the Independent Special Interlocutor.</p>
3.5	The Arrangement states that communities will be provided “expert input” on issues related to DNA and forensics. We are concerned about presenting the ICMP as subject matter experts in these issues when they lack critical context of understanding Indigenous histories, cultures, laws, protocols and knowledge systems and



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	have never worked with Indian Residential School Survivors. This appears likely to privilege Western science and technology, diminish the contributions of Indigenous systems, and promote a harmful, non-holistic approach to these matters.
3.6	(Also SW 10) Unclear what is envisioned in the statement that the ICMP agrees to “deploy subject matter experts to advise on the resolution of cases and repatriation of remains.” Does this mean the ICMP will advise the federal government on cases involving specific grave sites and individuals? Where would they be deployed? To Indigenous communities? Why is such a request to be only from the federal government and not in partnership and with the consent of Indigenous Peoples and affected families? Is the system Indigenous friendly?
SW4.0 Definitions and Applicable Documents	Applicable” to Missing Children? There is no identification and/or acknowledgement of the Independent Special Interlocutor for Missing Children and Unmarked Graves and Burial Sites associated with Indian Residential Schools. Missing Children is her Mandate. Why is it not applicable here?
4.1	“Indigenous Organizations included in the engagement will be identified by CIRNAC....” Canada will decide for Indigenous Peoples and will decide who gets to participate in Canada’s project for the best results. There is no reference to collaboration. How will CIRNAC make this unilateral decision “FOR” all Indigenous Peoples in Canada? Colonial language and approach.
SW5.0 Scope of Work	
5.1	What is meant by an “educational campaign” and how does this relate to the Mandate of the National Advisory Committee? Unclear why ICMP and CIRNAC are best positioned to identify “regionally appropriate Indigenous facilitators” rather than, for example, National Indigenous Organizations (NIOs) or Regional Indigenous Organizations. Unclear why the word “appropriate” is used in this phrase.
5.2	Organizations listed in this clause are government organizations, coroners, or affiliated agencies. Unclear why these groups are required “to promote collaboration” within a process ostensibly intended to hear the views and concerns of Indigenous Peoples. The OSI National Gatherings bring subject matter experts, communities, governments, churches together, to discuss the subject matter and community needs – and provided education and networking opportunities.



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	This entire section (5.1 – 5.6) is a duplication of the work already being done by the OSI, NCTR and the National Advisory Committee and is going to cause confusion to communities.
5.3	The only oversight is through CIRNAC. Indigenous Peoples should have a role in the oversight.
5.4	
5.5	Only CIRNAC will attend and they will decide. No opportunity for Indigenous input or others. Completely reinforces the control by CIRNAC. A closed process.
5.6	Where's the inclusion of Indigenous leadership, cultural advisors, Elders, Survivors...?
SW6.0 Business and Technical Environment	
6.1 Business Environment	
6.1.1	
6.1.2	
6.2 Technical Environment	
6.2.1	
6.2.2	
SW7.0 Tasks	
8.1 Identifying Indigenous Facilitators	<p>The language which describes the role of the Indigenous liaisons as ensuring that “spiritual and ceremonial needs are met” while the ICMP provides “expertise and educational elements on all matters related to identification, repatriation, and DNA analysis” is highly disrespectful. This framing trivializes Indigenous laws, protocols and Sacred ceremonies which are absolutely central to the search process. Furthermore, it asserts that the ICMP holds all the expertise, denigrating the knowledge of Indigenous Survivors, Elders and Knowledge Keepers and ignoring the fact that many Indigenous communities within Canada have experience in many aspects of identification and repatriation in the specific contexts of Indian Residential Schools that the ICMP itself lacks.</p> <p>Unfortunately, the devaluation of Indigenous knowledge and expertise is present throughout this entire Arrangement.</p>
8.1.1	Indigenous representation in this context is a token reference as there is no obligation to work with Indigenous subject experts in any area.



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8.1.2	There is no mention of a distinctions-based approach to ensure First Nations, Inuit and Métis representation. Furthermore, there are more than eight regions in Canada so some provinces or territories will not have a “regionally appropriate Indigenous facilitator”.
8.1.3	The lack of involvement of Indigenous organizations in identifying “regionally representative Indigenous facilitators” is problematic. Since the Indigenous facilitators will provide advice to ICMP on appropriate organizations and communities to participate in engagement, it is important that National and Regional Indigenous Leadership are supportive of those identified as facilitators. This contradicts the wording in the 4.1 chart where CIRNAC will only identify organizations for engagement.
8.1.4	
8.1.5	
8.1.6	
8.1.7	
8.1.8	This clause should have specified that Indigenous health support workers would be present. In addition, it should have specified that the health support workers will have specialized training to support those experiencing the complex forms of trauma associated with search and recovery work in a culturally responsive, trauma-informed manner.
8.2 Opening Round Table	Given that the majority of the relevant experts are currently serving as members of the National Advisory Committee, how will the timing of the proposed expert roundtable be determined so as to not conflict with or disrupt the work of the National Advisory Committee? Will communities be compensated for their participation in the roundtables and will appropriate supports be in place post engagement? In this entire section – who is going to speak to the work already underway by the OSI, NCTR and National Advisory Committee and explain how this is different? Who has that expertise?
8.2.1	There should be emphasis on inviting First Nations, Inuit and Métis experts, including in particular those already engaged in search efforts. The ICMP should be called on to work with the NCTR, OSI and National Advisory Committee in identifying participants.



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8.2.2	This entire section (8.2) could be delivered and accomplished in a breakout session at the Independent Special Interlocutor’s National Gatherings where everything is already in place.
8.2.3	
8.2.4	
8.2.5	
8.2.6	
8.2.7	The choice of the term “Town Hall” is colonial in that it is generally used when designing general input from members of the public. The choice of this term demonstrates a lack of understanding of Indigenous cultural protocols and laws.
8.2.8	What would be the purpose of the proposed “Expert Task Force” and how would it differ from the National Advisory Committee?
8.3 Initial Town Hall	
8.3.1	This is too late in the stage of this initiative to be involving National and Regional Indigenous Leadership. This is a token approach and insulting.
8.3.2	
8.3.3	
8.3.4	This conflicts with section 8.1.3 which specifies that the Indigenous facilitators will provide advice on appropriate organizations and communities for engagement. This contradicts S 4.1 where CIRNAC states they will decide who is engaged.
8.3.5	Is the expertise Indigenous specific?
8.3.6	(also 8.4.10) Educational materials, “training modules”, “question and answer sessions” and “brochures, training sessions, and toolkits” appear to duplicate work being done by the National Advisory Committee. We would question whether the ICMP has the cultural competency to produce materials that will be beneficial to Indigenous communities and not triggering. There appears to be no provision for the review of these materials by Survivors and other Indigenous experts.
8.3.7	Will the summary notes be made available to the communities and participants?



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8.4 National Community Engagement Sessions	<p>It is not possible to hold this number of community engagement sessions in such a short time period and be able to do so in way that is trauma-informed.</p> <p>We are also concerned that the number and pace of engagement sessions will result in engagement fatigue, undermining all our work.</p>
8.4.1	<p>The use of the word “partners” by government and ICMP is problematic because partnership cannot be assumed; rather, it needs to be established with every new government initiative. This is always the case and especially so where an Arrangement was negotiated without transparency to Indigenous communities leading search and recovery efforts, National Indigenous Organizations, and Indigenous-led bodies already working on this (NCTR, NAC, OSI).</p> <p>In addition, the definitions section makes clear that CIRNAC has the authority to determine which Indigenous Organizations will participate in the engagement. Given this, it is unclear whether the input gathered at the Initial Town Hall from National and Regional Indigenous Leadership will actually inform the national engagement process. The use of the term “appropriate Indigenous Organizations” is also concerning as it is vague and is paternalistic since it is up to CIRNAC to unilaterally determine “appropriateness.”</p> <p>How was the number 35 determined? What is the rationale? In consultation with who?</p>
8.4.2	
8.4.3	Continuing use of term “ appropriate communities” is problematic.
8.4.4	Again, “ appropriate local leadership” is not respectful.
8.4.5	
8.4.6	Token representation when there has been no inclusion of Indigenous Peoples in the entire process leading up to this.
8.4.7	How would Indigenous facilitators meet spiritual and ceremonial needs after the engagement sessions? Will they proactively follow up with participants to check to see if they are doing okay? This seems like a clause that ICMP will not be able to deliver on without dedicated staff. This is linked to the concern raised above about the lack of a trauma-informed approach given the short timeframe for engagement.
8.4.8	...needs and “ desires ” – such an inappropriate word in this process.



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8.4.9	The term “establish a culturally appropriate communication protocol” here and in many other sections is an odd way to describe the role of Indigenous facilitators. It is awkward and points to a lack of cultural competency in working with Indigenous communities.
8.4.10	
8.4.11	The term “free-floating discussion” is very odd. Is it fair to expect the “Indigenous facilitators” – who are being given overwhelming, unrealistic duties – to “canvass” needs specific to DNA analysis and the repatriation process...etc.?
8.5 Closing Town Hall	This seems to be a Town Hall where National and Regional Indigenous Leadership will not be provided with a lot of time to speak. In reading through this plan, it is not clear how much time will be provided to the educational portion (delivered by ICMP) and the “free floating discussion” periods.
8.5.1	
8.5.2	Same comment as above in relation to s. 8.4.7
8.6 Reporting	
8.6.1	CIRNAC is being provided an opportunity to review and comment on the draft but no Indigenous Peoples’ organizations or Indigenous-led processes will see the report before it is publicly released. Reciprocity is critical. The ICMP should not be taking information from communities without a commitment and obligation to report back to them.
8.6.2	<p>This provision, which requires the report to be delivered by June 2023, coincides with the delivery of the Independent Special Interlocutor’s Interim Report. There is no indication that the results of this parallel work and the recommendations contained in the report will be shared with the Office of the Independent Special Interlocutor or other Indigenous-led bodies already doing this work. This will result in a duplication and lack of coordination of work with potential conflicting recommendations.</p> <p>In addition, the contract term goes until March 2024 but the substantive work is scheduled to be completed under Phase 1 by June 2023. Does this signal an intention to agree to the additional optional service that extends the arrangement for an additional year? If the additional optional service is being contemplated, are there plans to have NIOs provide input? What about Indigenous-led bodies already engaged in this work (NCTR, NAC, OSI)?</p>
9 Deliverables	
9.1	



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9.2	
9.3	What level of expertise does the Project Authority have to be the sole oversight to this process and subject matter on behalf of all Indigenous Peoples within Canada?
9.3.1	
9.3.2	
9.3.3	
9.3.4	
9.4 Draft Report	
9.4.1	ICMP will provide CIRNAC with reports of each engagement session on a bi-weekly basis. There is no provision for how this information will be shared with participating Indigenous communities.
9.4.2	
9.4.3	<p>In this section, it says that the recommendations will support Canada’s development of a framework for identification and repatriation. The terminology throughout this Arrangement is confusing. The project is called “engagement strategy on missing children”, the deliverable indicates it will support a framework, and “national strategy” is used elsewhere.</p> <p>Much of this work is duplicative of the Independent Special Interlocutor’s Mandate.</p> <p>In addition, the National Advisory Committee has a specific Mandate to provide assistance to Indigenous communities in accessing independent expertise on these matters.</p>
9.4.4	
10.0 Optional Services	<p>Concerned that the described optional services specifically names receiving advice from the ICMP on use of its Integrated Data Management System. Adoption of a national data management system should be subject to discussion with Indigenous communities and experts and address Indigenous concerns around data sovereignty.</p> <p>In addition, the fact that “Central Agencies and the appropriate Cabinet Committees” will provide direction on cases to resolve and remains to repatriate rather than Indigenous families, communities and leadership is paternalistic and concerning.</p>



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	Where's the oversight to this process and collaboration with Indigenous experts working on these matters? NCTR, OSI and NAC?
11.0 Reporting Requirements	There is nothing that indicates this report will be shared publicly. Just like the negotiation of this Arrangement, there is a lack of transparency in terms of sharing this report with Survivors, Indigenous families, and communities leading search and recovery work.
12. Risks and Constraints	<p>This section is not sufficient to protect the rights of communities. The search for missing children – and, in particular, issues around exhumation, identification and DNA collection and storage – are not only culturally sensitive, there is a risk of profound harm to Survivors, families and communities if done in an improper way or without adequate safeguards.</p> <p>This is the first time in this whole Arrangement that there is any mention of honouring and remembering the missing children. That speaks to how problematic this Arrangement is. It seems more focused on what ICMP and Canada will get out of this, rather than on bringing dignity to the missing children and respecting Survivors, Indigenous families and communities.</p> <p>The fact that sharing information with affected families and communities is located in the “Risks and Constraints” clause is also concerning and does not seem to be an appropriate place for this.</p>