

Human Rights Violations in the Chiapas Prison System

Special Report

San Cristóbal de Las Casas, Chiapas, February 1st, 2011
Centro de Derechos Humanos Fray Bartolomé de Las Casas, A.C.



[foto: "Scene inside a Chiapas prison. Photo: CDH Frayba"]

I. Introduction

In 2010, the Fray Bartolomé de Las Casas Human Rights Center (henceforth Frayba) received 17 denouncements from prisoners and their family members, signed by a total of 2,142 individuals. Likewise, we have documented the testimonies of 24 relatives of prisoners who have denounced various acts and omissions that officials in charge of Penitentiaries have committed. These acts have predominantly directly affected women, boys, and girls who are subjected to cruel, inhuman, and degrading treatment upon entering the prisons to visit their family members.

Over the course of 2010, Frayba has received denouncements from prisoners and their family members about cruel, inhuman, and degrading treatment or punishment – such as torture – that they experience on a daily basis in the Penitentiaries of Chiapas in the municipalities of Cintalapa, Comitán de Domínguez, Copainalá, Motozintla, Pichucalco, Ocosingo, Tonalá, and San Cristóbal de Las Casas. The government of the state of Chiapas is failing in its obligation to guarantee and protect the life, physical and psychological integrity of individuals imprisoned in the aforementioned penitentiaries.

Article 5 of the American Convention on Human Rights states that: *“Every person has the right to have his physical, mental, and moral integrity respected. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”* This same principle is incorporated in other international instruments signed and ratified by the Mexican State, such as the International Covenant on Civil and Political Rights and the Interamerican Convention to Prevent and Punish Torture, among others.

Independently of the crimes that the prisoners may have committed, these rights are inalienable and cannot be limited under the pretexts of “security” or “danger.” The fact that they have been convicted of crimes does not mean that they should also be deprived of rights that are guaranteed to every person¹. The injuries, suffering, health problems, or damages experienced by an individual while imprisoned can be considered a type of cruel punishment when, due to the conditions of their imprisonment, there is a deterioration of physical, psychological, and moral integrity².

The main human rights violations that have been documented are the following:

- Overcrowding;
- Cruel, inhuman, or degrading treatment or punishments, products of violence and poor conditions of detention;
- Deficient hygienic and sanitary conditions and infrastructure;
- Insufficient or nonexistent medical attention;
- Scarcity or poor quality of food;
- Legal insecurity of those deprived of their liberty, including lack of effective recourse before the law;
- Lack of access to education, work, and recreation;
- Forced transfers;
- Forced nudity;
- Sexual violence.

¹ International Labor Organization, ILO, General Report of the Committee of Experts on the Application of Conventions and Recommendations, par. 145. 2001.

² Interamerican Court of Human Rights (IACHR), *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

II. Situation of the inmates and their family members.

Below we present a synthesis of the testimonies and denouncements submitted to this Human Rights Center that demonstrate the situation and prison conditions in various State Centers for the Social Reintegration of Convicts (henceforth *CERSS*, by its initials in Spanish) in Chiapas. For security and safety reasons, individual names have been changed.

Cintalapa: CERSS No. 14, "El Amate"

• **Case 1:**

On January 30th, 2010, Juana denounced that the officials at El Amate punished her for 6 months and suspended her rights to conjugal/family visits indefinitely, as well as keeping her under watch. The reasons for this decision were never explained to her.

• **Case 2:**

Via a written document addressed to the State Governor, 1,742 inmates (signatories) of El Amate expressed their dissatisfaction and complaints. The inmates denounced that the head warden, Alfonso Rodríguez Núñez, *"acts in an arrogant and aggressive manner with inmates' family members who come to visit them on the assigned days, and as a result of his bad actions, the prison is destabilized and remains in a state of tension."*

• **Case 3:**

On July 24th 2010, a joint operation between the State Preventive Police, Ministerial Police, Federal Police, and Federal Ministerial Police was implemented to put an end to a supposed riot that had begun on July 21st. The operation was carried out with the disproportionate or unnecessary use of force, using tear gas that left an unknown number of men, women, and children injured (including visitors), as stated in the following testimonies:

Juana: *"For me my complaint is that at like 3 or 4 in the morning, soldiers, police officers, and I don't know who else came in. They came in firing their weapons, launching gas, and it sounded like bombs. Then they didn't even give them anything to eat, they have them kneeling down on the soccer field. There are visitors and they wouldn't let them leave. We have family there, and they're not giving us any information. They're handcuffed, beaten, bloody, from the women's window you can see everything. They are suffering. They also launched gas against the visitors."*

Marcelina: *"Supposedly they came in to do a search but that's not true because they beat all the inmates... they even undressed them, and since Wednesday that they went on alert, they stopped giving them water, food, and all that."*

María: *"My children are outside and they won't let them in, they bring me my medicine because I can't walk but they won't let them in."*

Due to the urgent nature of this situation, Frayba solicited precautionary measures with the state government of Chiapas to protect the inmate population at El Amate as well as their family members. As a result, the Subsecretary of Criminal Sanctions and Security Measures, Gustavo Francisco Ferreira Jiménez, released a report in which, in his response, he mentions that: *"said measures were implemented, not in an effort to infringe on the fundamental or human rights of the inmates, their only purpose is to secure the physical integrity of the general population, maintain order and stability within the Penitentiary Institution..."*

• **Case 4:**

Via a written statement released on August 26th of this year, 18 female inmates denounced that their condition as women has put them in a situation of vulnerability in the CERSS and that they wanted to be heard. In their denouncement, they state: *“The director of the prison is asking for our documents, and he won't give us any explanation (...) at the same time, we're suffering through other kinds of problems.. there is a lot of humiliation that we suffer here...”*

• **Case 5:**

On October 29th 2010, the wife of an inmate named Gilberto arrived to explain the conditions in which her husband is living inside the prison: *“Since a year ago they've operated on his leg four times and it always ends up bad, and we have spent a lot.”* On a separate occasion, she stated that *“Gilberto was transferred to the 72-hour area where he can't sleep lying down, he's standing up all night on crutches because there's no room to lie down, and that's worrisome because his leg is bad.”*



[foto: “View through the fence at CERSS No. 14 “El Amate”. CDH Frayba”]

Comitán de Dominguez: CERSS No. 10:

• Case 1:

Via a written statement, on April 22nd of this year, the inmates and their family publicly denounced cruel, inhuman and degrading treatment: *“we have been mistreated, those of us who come to the prison to visit as well as the inmates.. upon arrival they take us to the medical area to carry out a vaginal exam, and not only on us, but also on the minor girls.. inside the prison the director is corrupt, aside from the fact that he sends for the inmates and gasses them or beats them, but he's smart because he separates them for a few days from their visitors and from the other inmates so they won't see them beaten or mistreated by the guards under orders of the director...”* (Signed by 34 people)

Copainalá: CERSS No. 15:

• Case 1:

On August 4th 2010, Rosario and her three minor children went to visit her husband but were denied access to the prison, under the argument that new rules and orders were being applied by orders of the prison director and the Subsecretary of Criminal Sanctions. Later, on August 7th 2010, Rosario was once again denied entry to the prison, this time because she was wearing her regional dress, which was not permitted and which she needed to change. She also would not have been able to enter with her minor children.

In addition, on August 7th, Frayba received a denouncement written by a number of inmates from this CERSS who asked for the following: *“1) That their uses and customs be respected, 2) That their family members be granted access, 3) That the responsibilities of authorities in charge be defined, 5) Dignified food because what they give us is poorly prepared and makes us ill, 6) That there not be retaliation against those who are mobilizing.”*

• Case 2:

According to denouncements released since August 10th 2010 on behalf of CERSS inmates, restrictive measures are being implemented in the prison which violate the physical and psychological integrity of those residing inside the prison. According to those who signed, by orders of director Martín Toledo Fernández and Subsecretary for Criminal Sanctions and Security Measures Francisco Ferreira Jiménez, they are being denied the entry of food, as well as having visitation hours for family restricted. These family members are also subjected to blackmail, abuses and threats by warden Nefer Peña Santiago and Laura Córdova Guzmán. In the denouncements they outline discriminatory and preferential treatment towards some inmates, especially when it comes to any ex-public servant (Number of inmates who signed: 167).

The prison inmates once again protested the restrictions, prohibitions, and poor treatment that they and their family receive, outlining them in the following manner:

“They don't allow the entry of food like bread, vegetables, toilet paper, toothpaste. They prohibit conjugal visits and visitation days for minor children beginning at 6 months. This is why we're protesting the irregularities that are being committed in CERSS No. 15 in Copainalá Chiapas. And for this reason we express the following: 1) We are limited in access to WATER which is used for our personal hygiene, they bring it in by a pipe which is also contaminated by dirt and mud, making it useless for human consumption. It is also used to wash food and prepare drinks but it's not potable and we're already becoming ill in these unhealthy conditions in which infections spread rapidly.. 2) we are being denied access to our pantry which is for our use.” (Signed by 48 inmates at CERSS No. 15).

Motozintla: CERSS No. 6

• **Case 1:**

Forced transfer and cruel, inhuman, and degrading treatment or punishment

On October 8th 2010, in the CERSS, Raymundo denounced the following: *“they took me out of my cell, down to an area, forcing me to pull grass with my hands, and on the 9th they beat me so that I wouldn't lift my head, and on the 13th I was forced to sign some documents they grabbed my hand, put ink on my palm and forced me to put my print on a blank paper.”* Raymundo was forcibly transferred from CERSS No. 5 in San Cristóbal de Las Casas to CERSS No. 6 in Motozintla, as a form of punishment.

Prison conditions

On October 21st 2010, the inhabitants of the CERSS released a written statement denouncing the following: *“a) Threats and beatings by the warden and his officers, b) They do not allow our family members to enter with food or other belongings because inside the prison they don't even give us water and only four tortillas all day long, c) On some occasions we have spent 8 days locked up in a cell, without bathing and still prohibiting our family from bringing us personal items. They don't allow us to make calls or even bring in notebooks, paper, or pens because the director says that they don't want us to write or call Human Rights to complain, d) They extorted from us an amount of \$10,000 pesos to be given to the authorities so that we can go into the green open areas inside the prison.”* (Signed by 50 inmates).

Abuse against women

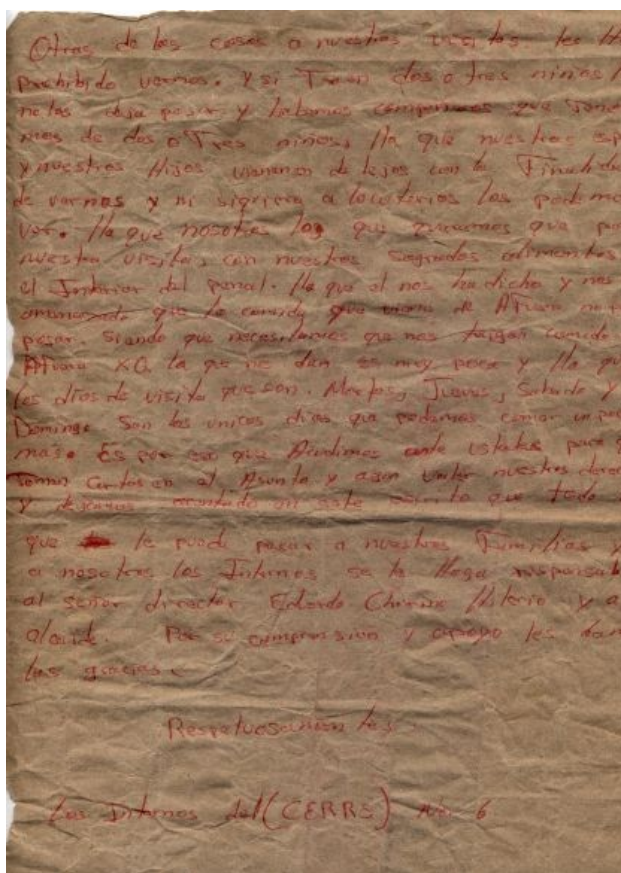
On October 8th, 2010, in CERSS No. 6, Reina was denied access to visit her husband, since she was told that the CERSS is for punishment and that the order came from prison director Eduardo Chirino Heleiro. On October 10th, in CERSS No. 6, in order to enter to visit her husband, she was forced to remove her clothes, forced to assume obligatory positions, checked in her private areas and was the object of insults from two women and the guard commander. In addition, they took \$170 pesos from her telling her that bringing in money was prohibited.

Reina's Testimony

“When I went into inspection, they told me to take off my shirt (two women guards) ‘take off your shirt, bra, pants, and underwear’ and I did it. Afterwards they told me to put both hands on my head and to do 10 squats and I told the guard ‘and who orders that?’ and they told me ‘this is the law that Juan Sabines and Calderon are ordering, that this is how inspection has to be, but it's not that we want it’ (the position in which the squats were done, was one in which one of the guards was in front of me and the other was behind, where they were both looking at my parts)”.

• **Case 2:**

Due to a fight, Eduardo spent three months in CERSS No. 5 with food restrictions and in solitary confinement, later he was transferred to the Motozintla prison, considered, according to testimonies, to be a punishment prison. On October 10th of this year, his mother, who was going to visit him, was denied access under the argument that visits were prohibited. After much insistence, she was allowed to see her son who expressed his concern about the conditions to which he was subjected.



[foto: "Copy of a written denouncement from the inmates at CERSS No. 6 in Motozintla. CDH Frayba"]

Pichucalco: CERSS No. 11

• Case 1:

On September 23rd 2010, Jerónima and Patricia, wives of two inmates, denounced the conditions to which they were subjected on September 12th, at the CERSS, where in order to gain access to their family visitation, according to their testimony: "They told her they were going to send her to the doctor for the medical exam, that they were going to perform a vaginal inspection."

Ocosingo: CERSS No. 16

• Case 1:

On August 10th 2010, inmates of the CERSS, via a written statement, expressed the prevailing complaints within the prison. The inmates stated that the directors have taken restrictive measures with respect to conjugal visits, limiting visiting hours. (Signed by 81 inmates of CERSS No. 16).

Tonalá: CERSS No. 13

• Case 1:

On November 5th, at 7 a.m., Juan went on a hunger strike and later communicated with Frayba via telephone, to make public his actions and stated that he had received threats and was not allowed to have water to keep his hunger strike going.

On November 9th 2010, Frayba received three letters from Juan, inmate of the CERSS, that denounced the poor conditions to which inmates at the penitentiary are subjected: *“This is with the purpose of making public the retributions that I have suffered on behalf of Center Director Arturo Gutiérrez Bolaños and his warden Rojelio Anjel Camacho.. On the 31st of October they gave us our food, which was rotten meat which gave everyone diarrhea.. here in the center there are many complaints from the prisoners but no one dares denounce it out of fear that they'll be locked up.. intimidated by the director, and the threats of transfer etc..”* Juan was put in confinement for having denounced these complaints.

According to Juan's denouncement, on December 3rd, 29 days into the hunger strike, his right to protest was not respected, he was ordered to end the strike via harassment, abuse, and denial of medical care. Juan states that those responsible for these acts were the prison director Arturo Gutiérrez Bolaños, officers of the penitentiary police, and prisoners who follow their orders.



[foto: “Copy of a denouncement received by Frayba, asking for intervention. CDH Frayba”]

III. Systematic Human Rights violations in the Chiapas prison system

After making detailed and exhaustive documentation, this Human Rights Center can confirm that there are systematic Human Rights violations in the Chiapas prison system. There are universally recognized minimum rules and standards that the Mexican state is obligated to respect in order to guarantee dignified life conditions to persons deprived of their liberty. They are, for example, Principles and Best Practices on the Protection of Persons Deprived of their Liberty in the Americas, and Minimal Rules for the Treatment of Prisoners, among others. On various occasions, the Interamerican Court of Human Rights (IACHR) has expressed its concern about the situation in the prisons of countries in Latin America, reiterating to the Party States their obligations to implement conditions for the humane treatment of persons deprived of their liberty³.

From the aforementioned cases, Frayba has determined a series of systematic violations of the rights of those imprisoned in the state of Chiapas which in and of themselves constitute Torture, according to established case law from the IACHR:

³ International Court of Human Rights,

Torture: The prisoners are suffering forms of psychological torture upon being subjected to isolation, forced nudity, sexual and cultural humiliation. It is important to highlight that the IACHR has stated that: “...*detention in conditions of overcrowding, isolation in smaller cells, lacking in ventilation and natural light, without a bed in which to rest nor adequate hygiene conditions, and solitary confinement or unnecessary restrictions on the schedule of visits constitutes a violation of personal integrity.*” Likewise, it has been recognized that threats and the real danger of subjecting a person to physical injury can be considered psychological torture⁴.

Violence towards women: International instruments emphasize women's right to have a life free from violence and to not suffer any act of torture. It must be mentioned that international jurisprudence states that “...*sexual violence is made up of actions of a sexual nature that are committed against a person without their consent, which aside from being a physical invasion on the human body, can include acts that do not involve penetration or even any physical contact.*” Vaginal inspections that penitentiary authorities are imposing constitute sexual violence and is also therefore considered torture, punishable by international treaties on the subject⁵.

Violence towards children: As far as protection of the boys and girls that visit their family members in the Penitentiaries, the Convention on the Rights of the Child states that that they should be able to remain in contact with their parents, and that they shall not be subjected to torture or other cruel, inhuman, or degrading treatment or punishment. Currently the prison authorities in the CERSS facilities are violating the physical and psychological integrity of children.

Rights and restrictions: All persons deprived of their liberty shall enjoy the same rights recognized for all persons included in international instruments with the inherent limitation of their condition as persons deprived of their liberty

Food and water: Persons deprived of their liberty have the right to receive adequate nutrition with respect to quantity, quality and hygienic condition, and likewise have the right to consume potable water. The suspension or limitation of food or water as a disciplinary measure is prohibited.

Health: The Human Rights Committee believes that the obligation to treat all persons with due respect, owing to the inherent dignity of the human person includes, among other things, the availability of adequate medical care⁶.

Transfers: Inmate transfers shall at no point be carried out as a form of punishment, repression, or discrimination. In the event of a transfer, it must be authorized by the relevant competent authorities, taking into account the necessity for the inmate to remain close to their family, community, legal defense, and the court or other State organ familiar with the case. Transfers must always be carried out with due respect to human rights and human dignity.

Contact with the outside world: Being deprived of one's liberty does not mean that inmates cannot remain in touch with the outside world. To guarantee this right and the psychological integrity of persons deprived of their liberty, they have the right to send and receive correspondence, as well as to have periodic visits with their family members and other persons, especially their father, mother, sons and daughters, as well as with their spouses or

⁴ Interamerican Court of Human Rights (IACHR), *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

⁵ Interamerican Court of Human Rights (IACHR), *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

⁶ Human Rights Committee, *Kelly Paul v. Jamaica*

partners. They may not be prevented from presenting complaints directed at the corresponding organism.

Hygienic conditions: From the testimonies gathered, it is clear that the CERSS facilities do not fulfill their obligations to provide the hygienic conditions necessary to ensure respect for the human dignity of the inmates. This right includes being able to have access to basic hygiene products and water for their personal cleanliness. It is important that women and girls can have access to the necessary items for the sanitary needs unique to their sex.

Housing conditions: Persons deprived of their liberty have the right to live in a dignified space. For this, there are some minimal conditions that must be respected, such as: sufficient space, daily exposure to natural light, appropriate heating and ventilation, an individual bed, appropriate bedding, and other conditions necessary for nighttime rest. Persons who are ill or handicapped, children, pregnant women, lactating mothers, and senior citizens, among others, have the right to live in housing that is adequate for their conditions.

Discipline and punishment: With respect to disciplinary punishments in the CERSS facilities, the following practices are prohibited: corporal punishment, enclosure in a darkened cell, as well as any cruel, inhuman, or degrading form of treatment. The International Court of Human Rights has indicated that prolonged isolation and solitary confinement, constitute, in and of themselves, cruel and inhuman treatment⁷.

Bodily searches: Bodily searches are being carried out in various Penitentiary Facilities that are incompatible with human rights, in which it is established that: “*Bodily searches carried out on persons deprived of their liberty and on visitors to prison facilities shall be practiced in adequate sanitary conditions, by qualified personnel of the same sex, and shall be compatible with human dignity and with respect to fundamental rights.*” It must be mentioned that vaginal and anal searches have been denounced and are prohibited since, as we have mentioned before, these searches constitute sexual violence - and as such, torture.

Humane treatment: Persons deprived of their liberty have the right to be treated humanely, and with due respect for their human dignity, their rights and fundamental guarantees. It is vitally important that they can live in conditions that, at minimum, guarantee and respect their lives and physical and psychological integrity.

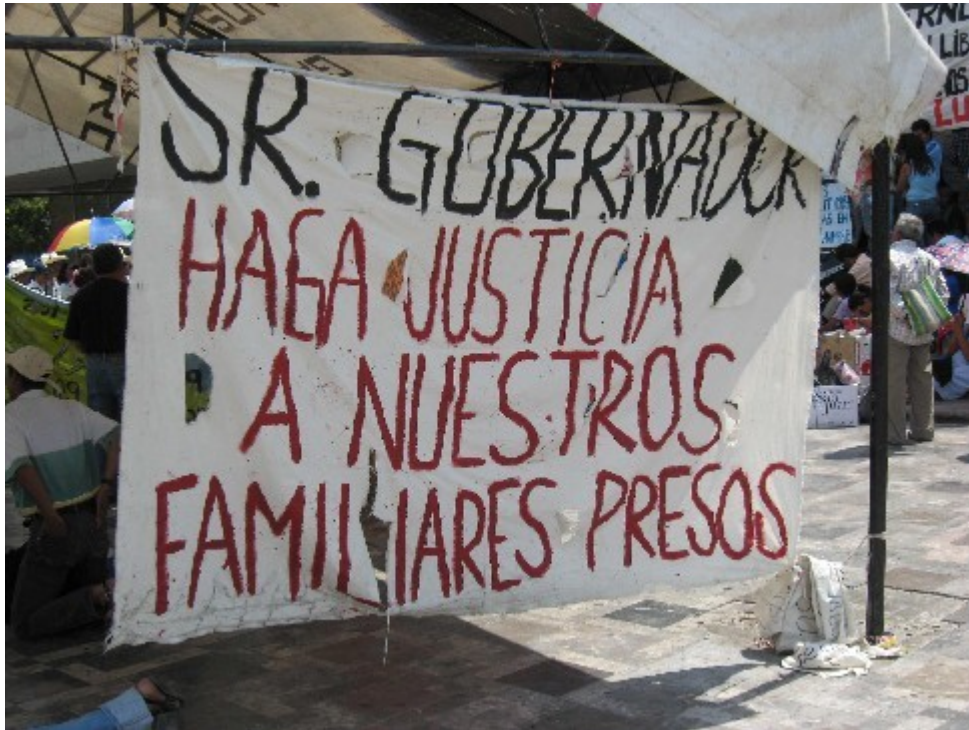
Faced with the situation denounced by inmates and their families, the response of those in charge of the CERSS facilities has been to deny the above-described situation, justifying their repressive acts by pointing to protest activities, classifying them as “vandalous” acts and that, as such, they are acting to restore “order.”

In light of this, the Fray Bartolomé de Las Casas Human Rights Center believes that:

- All cruel, inhuman, and degrading treatment and acts of torture that prevail in the prisons of the state of Chiapas must end.
- The families and visitors of the inmates must be respected according to their human dignity.
- Information about the rights, obligations, and prohibitions of inmates should be provided in a clear and prompt fashion because there is a lack of knowledge about – and consequently, an isolation from – this information.

⁷ Interamerican Court of Human Rights (IACHR), *Case of the Miguel Castro-Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160.

- A swift and effective investigation should be carried out on officials at all levels who are committing these human rights violations.
- The actual situation in the CERSS facilities of Chiapas should be made public, and national and international observers should be allowed entry to verify their state and conditions.



[foto: Family members of inmates make their demands known to the state government. CDH Frayba]

IV. National and International instruments that protect the rights that have been violated:

- International Covenant on Civil and Political Rights, adopted in New York on December 16th, 1966 and ratified by Mexico on March 23rd 1981, <http://www2.ohchr.org/english/law/ccpr.htm>
- American Convention on Human Rights, adopted in San José, Costa Rica, November 22nd, 1969 and ratified by Mexico on March 2nd 1981. <http://www.oas.org/juridico/english/treaties/b-32.html>
- Interamerican Convention to Prevent and Punish Torture, adopted December 9th 1985, and ratified by Mexico on February 11th 1987, <http://www.oas.org/juridico/english/treaties/a-51.html>
- Interamerican Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belém Do Pará,” adopted June 9th 1994, and ratified by Mexico June 19th 1998. <http://www.oas.org/juridico/english/treaties/a-61.html>
- Convention on the Rights of the Child, adopted November 20th 1989, ratified by Mexico on September 21st 1990, <http://www2.ohchr.org/english/law/crc.htm>
- Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas (Resolution 1/08, CIDH), Rapporteur on the Rights of Persons Deprived of Liberty, <http://www.cidh.oas.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>
- United Nations Standard Minimum Rules for the Treatment of Prisoners (Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663C (XXIV) of July 31 1957 and 2076 (LXII) of 13 May de 1977), <http://www2.ohchr.org/english/law/treatmentprisoners.htm>
- Basic Principles for the Treatment of Prisoners (Adopted and proclaimed by General Assembly resolution 45/111, December 14th 1990), <http://www2.ohchr.org/english/law/basicprinciples.htm>
- Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Adoption: UN General Assembly Resolution 43/173, December 9th 1988), <http://www2.ohchr.org/english/law/bodyprinciples.htm>
- Political Constitution of the United Mexican States, available in English at www.juridicas.unam.mx/infjur/leg/constmex/pdf/consting.pdf
- Penal Code for the State of Chiapas, available in Spanish at <http://info4.juridicas.unam.mx/adprojus/leg/8/251/default.htm?s>
- Code for the Execution of Criminal Sanctions and Early Release Measures for the State of Chiapas, available in Spanish at <http://info4.juridicas.unam.mx/adprojus/leg/8/247/>