

**DISSENTING OPINION OF JUDGES PICADO-SOTELA,
AGUIAR-ARANGUREN AND CANÇADO TRINDADE**

1. We, the undersigned judges, dissent from the majority opinion with respect to operative point 3 of the judgment, in which the Court dismisses the responsibility of the respondent State for the violation of the right to life of Mr. Asok Gangaram Panday.

2. It is our opinion that from the very moment that the Court established the responsibility of the respondent State for the illegal detention of Mr. Gangaram Panday, albeit by inference, it became necessary for it to accept the consequences of such a finding insofar as the protection of the victim's right to life is concerned. This conclusion follows, in particular, because the respondent State admitted in its own counter-memorial that Asok Gangaram Panday's detention " [intensified] *his depression and contempt for life*," something that cannot be separated from the cause of death. In any event, the reason why the Court was unable to go into greater depth in its argumentation as to whether or not the detention reported was illegal or arbitrary was that it did not have before it the legislative texts it had expressly requested of the respondent State.

3. The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (negative obligation). It also demands of the States that they take all appropriate measures to protect and preserve it (positive obligation).

4. The international protection of human rights, as it relates to Article 4(1) of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions. Due diligence imposes on the States the obligation to prevent, within reason, those situations which - as in the case now before us - could lead, sometimes even by omission, to the denial of the inviolability of the right to life.

5. Based on the foregoing, we, the undersigned Judges, consider that in the instant case the responsibility of the respondent State should have been determined on the basis of Articles 7(2) and 4(1) of the Convention read together with Article 1(1) thereof.



Soria Picado-Sótela



Asdrúbal Aguiar-Aranguren



Antônio A. Cançado Trindade



Manuel E. Ventura-Robles
Secretary