Industrial Law Journal, Vol. 00, No. 00, 2025.
https://doi.org/10.1093/indlaw/dwaf046

Informal Workers, Vulnerability and Human Rights: An Inter-American Story

MAURO PUCHETA* AND RENAN KALIL**

Acceptance Date September 24, 2025.

ABSTRACT

Informality is a defining feature of labour markets in Latin America and the Caribbean, where nearly half of the workforce remains excluded from formal protections. Traditional labour law, largely modelled on frameworks from the Global North, has proven ill-suited to address this structural reality. Against this backdrop, the Inter-American System of Human Rights (IASHR) may offer an alternative rights-based framework capable of recognising informal workers as subjects of protection beyond contractual employment relations. This article examines whether the Inter-American Court of Human Rights has moved towards recognising informal workers as a 'vulnerable group', a status that would entail specific obligations on States Parties. Drawing on the Court's evolving and recent jurisprudence on economic, social, cultural and environmental rights, the analysis demonstrates that whilst the Court has acknowledged informality as an aggravating factor, it has yet to conceptualise informal workers as a distinct category of vulnerability. By engaging with the doctrinal trajectory of transformative constitutionalism in Latin America, the article situates informality within broader debates on labour rights as human rights, and calls for a more systematic recognition of informal workers within the Court's jurisprudence.

1. INTRODUCTION: INFORMALITY AND LABOUR RIGHTS IN LATIN AMERICA

In Latin America and the Caribbean, informality is not a marginal issue but a deeply entrenched feature of the labour market. It permeates both formal and informal employment sectors, impacting the effective implementation of labour rights even when these are formally recognised in national and

* University of Kent, Canterbury, United Kingdom. Email: m.l.pucheta@kent.ac.uk.
** Instituto de Ensino e Pesquisa (Insper), Sao Paulo, Brazil. Email: renanbk@insper.edu.br.
We would like to express our sincere gratitude to Julieta Lobato and Franz Ebert, whose valuable comments and insightful reflections greatly enriched an earlier draft of this work.

international legal frameworks.[1] The continued prevalence of informal work can be attributed to factors such as economic instability, weak institutional structures and fundamental shortcomings in employment regulation.[2] A defining characteristic of informality in the region has been the emergence of a category of workers who operate outside the bounds of traditional formal employment and fall beyond the reach of conventional labour legislation. Another one has been the relationship between employees and capital in the informal sector, which is increasingly mediated through debt, rather than exclusively via wages, resulting in financial exploitation as a significant mechanism for capital accumulation alongside conventional forms of labour exploitation.[3] The sheer number of individuals engaged in the informal economy across Latin America and the Caribbean highlights its enduring significance for labour market analysis in the region. According to the ILO Labour Overview 2024, 47.6% of the workforce operates informally, typically facing precarious employment, low earnings and a lack of social protection.[4]

Informal work has proven a pivotal concept for understanding the dynamics of labour markets in developing economies since the 1970s. It challenges the notion of a standard employment relationship, which is characterised by stable, full-time, socially protected work, with minimum standards for working hours, remuneration, social security and union representation, regulated by legislation or collective agreements.[5] Despite initial assumptions that informality would diminish with economic modernisation, this view is now largely discredited.[6] The concept of informal work is highly contested.[7] Initially, it

[1] M. C. Cacciamali and M. de Fátima José-Silva, 'Mais informalidade, menos cidadania: considerações sobre esse círculo vicioso na América Latina' (2003) 2 *Cadernos PROLAM/USP* 10–3.

[2] J.-M. Servais, 'The Informal Sector: Any Future for Labour Law' (1992) 8 *International Journal of Comparative Labour and Industrial Relations* 299, 309; Cacciamali and José-Silva(n.1); B. Neilson and N. Rossiter, 'Precarity as a Political Concept, or, Fordism as Exception' (2008) 25 *Theory, Culture and Society* 51–72.

[3] See Lobato in this special issue.

[4] ILO, *2024 Labour Overview: Latin America and the Caribbean* (Geneva: ILO, 2025).

[5] J. Breman and M. van der Linden, 'Informalizing the Economy: The Return of the Social Question at a Global Level' (2014) 45 *Development and Change* 920; R. Kalil, *Formas de Organização dos Trabalhadores Informais* (São Paulo: LTr, 2014), 26–34.

[6] D. Ashiagbor, 'Introduction: Narratives of Informality and Development' in D. Ashiagbor (ed), *Re-imagining Labour Law for Development: Informal Work in the Global North and South* (Oxford: Hart Publishing, 2019), 1, 2.

[7] There is a wide range of research that has analysed informality from different perspectives. See: A. de Freitas Barbosa, 'O conceito de trabalho informal, sua evolução histórica e o potencial analítico atual: para não jogar a criança fora junto com a água do banho' in R. V. de Oliveira, D. Gomes and I. T. Moreira (eds), *Marchas e Contramarchas da Informalidade do Trabalho* (João Pessoa: Editora Universitária, 2011), 105–60; Kalil (n.5); L. McHugh-Russell, 'Labour Law,

described workers not protected by labour or social security legislation, operating outside formal regulatory frameworks.[8] Over time, however, it came to include a wide range of situations, from subsistence activities to small businesses connected to formal supply chains that avoid regulatory costs to boost competitiveness.[9] This diversity hinders establishing clear criteria for defining and measuring informality, often leading to varying interpretations of its extent and impact.[10]

This article adopts a broad definition of informality based on the International Labour Organisation (ILO) Recommendation No. 204 on the transition from the informal to the formal economy. This instrument defines the informal economy as encompassing all economic activities by workers and economic units that are, in law or in practice, not covered or insufficiently covered by formal arrangements, excluding illicit activities.[11] This Recommendation acknowledges that the high incidence of the informal economy poses significant challenges for workers' rights and negatively impacts the development of sustainable enterprises, public revenues and governments' capacity to implement economic, social and environmental policies. It notes that most people enter the informal economy not by choice but due to a lack of opportunities in the formal economy and the absence of other means of livelihood.[12] Under this framework, informal workers include: (i) own-account workers in informal enterprises; (ii) employers in informal enterprises; (iii) contributing family workers; (iv) members of informal producers' cooperatives; (v) employees with informal jobs, including those working in formal enterprises but lacking social protection, formal contracts, or employment benefits; (vi) workers in unrecognised or unregulated employment relationships.[13] A crucial aspect of Recommendation 204 is the recognition that informality can exist within and outside the formal sector, a particularly relevant dimension for the Latin American and Caribbean context and one of the main reasons why

Development Discourse and the Uses of Informality' in D. Ashiagbor (ed), *Re-Imagining Labour Law for Development: Informal Work in the Global North and South* (Oxford: Hart Publishing, 2019), 51–76.

[8] ILO, *Employment, Incomes and Equality: A Strategy for Increasing Productive Employment in Kenya* (Geneva: ILO, 1972); J. D. Krein and M. W. Proni, *Economia Informal: Aspectos Conceituais e Teóricos* (OIT 2010, Documento de Trabalho no 4, Série Trabalho Decente no Brasil).

[9] A. Portes, M. Castells and L. Benton, *The Informal Economy: Studies in Advanced and Less Developed Countries* (London: John Hopkins University Press, 1989), 12–31; Krein and Weishaupt Proni (n.8).

[10] Krein and Weishaupt Proni (n.8); Kalil (n.5).

[11] Items 2 and 4 of the ILO Recommendation No 204.

[12] Preamble of the ILO Recommendation No 204.

[13] Item 4 of the ILO Recommendation No 204.

informality has been so hard to grasp within traditional frameworks in labour law scholarship.[14]

Despite the structural nature of informal work in the region, their regulatory frameworks have often taken inspiration from, and been modelled on, labour law systems of the 'hegemonic' Global North.[15] This presents a significant challenge because traditional labour laws, designed for formal employment, rarely address the needs of informal workers, a far more important group in the Global South. In this complex legal and socio-economic landscape, the appeal of a human rights framework for informal workers lies in its broader scope of protection compared to traditional labour law, which often depends on the existence of a formal employment relationship.[16] For those engaged in subordinate or self-employed informal work, where no direct contractual employer relationship exists, human rights provide a critical alternative. By grounding protections in fundamental human dignity rather than formal contractual ties, this framework recognises informal workers as rightful subjects of labour rights, enabling them to assert claims that would otherwise be legally inaccessible.[17]

The Inter-American System of Human Rights (IASHR), the Organisation of American States (OAS) regional human rights mechanism, offers a compelling framework for this approach. The IASHR has established progressive standards that protect labour rights across the region.[18] It comprises two principal institutions: the Inter-American Commission on Human Rights (Commission) and the Inter-American Court of Human Rights (IACtHR or Court). The Commission, established in 1959, is primarily responsible for promoting the observance and defence of human rights throughout the Americas. To this end, it receives, analyses and investigates individual petitions alleging violations of the rights protected under the Convention. If deemed admissible, the Commission investigates the merits of the case, including

[14] Items 5 and 7 of the ILO Recommendation No 204.

[15] K. Sankaran, 'Labour Law in South Asia' in S. Marshall and C. Fenwick (eds), *Labour Regulation and Development* (Cheltenham: Edward Elgar, 2016), 213; Ashiagbor (n.6), 1.

[16] E. Albin, 'Precarious Work and Human Rights' (2012) 34 *Comparative Labor Law & Policy Journal* 1.

[17] IACtHR, *Advisory Opinion OC-18/03, Juridical Condition and Rights of the Undocumented Migrants*, Series A No 18 (17 September 2003), paras 73, 100, 119, 157; *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus and their Families v Brazil*, Series C No 407 (15 July 2020), para 155.

[18] M. C. Montejo, 'Labor Human Rights and the Jurisprudence of the Inter-American Court of Human Rights' in J. Bellace and B. ter Haar (eds), *Research Handbook on Labor, Business and Human Rights Law* (Cheltenham: Edward Elgar, 2019), 334–57; R. Kalil and M. Pucheta, 'Diálogo entre el Sistema Interamericano de Derechos Humanos y la Organización Internacional del Trabajo' in D. M. Royo and E. D. Bravo (eds), *Diálogo en el Derecho Internacional Público* (Valencia: Tirant lo Blanch, 2021), 175–210.

gathering information from both the petitioners and the State concerned. If the Commission finds that a violation has occurred and the matter is not resolved through a friendly settlement, it may issue recommendations to the State. Where the State fails to comply, the Commission may, at its discretion, submit the case to the IACtHR.[19] Furthermore, the Commission issues recommendations to states and prepares both annual and thematic reports on human rights issues within the region.

The IACtHR, instituted in 1979 under the authority of the 1969 American Convention on Human Rights (American Convention or ACHR), constitutes the principal judicial organ of the system and is entrusted with the fulfilment of two primary functions. In its contentious jurisdiction, the Court delivers binding judgments in cases brought before it by the Commission or by State Parties that have ratified the Convention and recognised the Court's jurisdiction.[20] These cases typically concern allegations of human rights violations by states, and their submission to the Court generally follows the exhaustion of procedures before the Commission. Notably, individuals do not have direct access to the Court in contentious cases. Secondly, in its advisory capacity, the IACtHR is accessible to its organs and all OAS State Parties,[21] allowing them to consult the Court on the interpretation of these instruments, as well as on the compatibility of domestic laws and proposed legislation with the American Convention's provisions.[22] While some scholars remain sceptical about attributing binding force to advisory opinions, viewing them primarily as interpretative guidance,[23] the IACtHR has taken a markedly assertive position. In *Advisory Opinions OC-21/14 and OC-22/16*, the Court explicitly recognises that advisory opinions contribute to the *erga omnes* effect of its jurisprudence and form part of the preventive control of conventionality. By emphasising

[19] Arts 44–51 of the American Convention.

[20] Art 62(4) of the American Convention. Twenty-five out of the 35 OAS States have ratified the American Convention: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinindad & Tobago, Uruguay and Venezuela. Two OAS States denounced it (Trinidad & Tobago (1998) and Venezuela (2012, which ratified it again in 2019, leaving the situation unclear). Ten OAS States have not ratified it (Canada, USA, and several of the English-speaking Caribbean nations). Twenty-one State Parties accepted the jurisdiction of the Court: Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad & Tobago, and Uruguay. The Venezuelan situation remains unclear.

[21] Art 64 of the American Convention.

[22] Art 64(2) of the American Convention.

[23] L. Hennebel and H. Tigroudja, *The American Convention on Human Rights: A Commentary* (Oxford: OUP, 2022), 1365–7.

that all state organs—judicial, legislative and administrative—are bound to conform to the American Convention, including through interpretations offered in advisory opinions, the Court positions these opinions as a vital tool for pre-empting violations and ensuring the effective protection of human rights across the Americas.[24]

The Court, alongside the Commission, has been instrumental in shaping labour rights standards within the IASHR.[25] While the Commission has contributed through its monitoring and promotional functions, it is primarily through the Court's jurisprudence that a significant evolution in the understanding of these rights has taken place. In the early stages, labour rights received little explicit recognition and were seldom addressed directly. Over time, however, the Court advanced their protection by grounding them in broader legal principles, extending safeguards through civil and political rights, and reinforcing guarantees via procedural avenues. Drawing on the tenets of the *Ius Constitutionale Commune en América Latina* (ICCAL)—a distinctly Latin American articulation of transformative constitutionalism, further examined in Section 2—the Court has effected a significant doctrinal shift. This trajectory has culminated in a more systematic and purposive interpretation of the American Convention, whereby economic, social, cultural and environmental rights (ESCER) deserve direct and autonomous protection, particularly through an expansive reading of Article 26 of the American Convention.[26] In alignment with this transformative jurisprudence, the Court has also recognised the particular vulnerability of historically marginalised groups—including Indigenous communities, Afro-descendant people, migrants and women—and has affirmed the necessity of adopting affirmative measures and positive obligations to secure the substantive realisation of their rights under the Convention.[27]

[24] IACtHR, *Advisory Opinion OC-21/14, Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, Series A No 21 (19 August 2014), para 31; *Advisory Opinion OC-22/16, The Standing of Legal Entities in the Inter-American Human Rights System*, Series A No 22 (26 February 2016), para 26.

[25] E. F. Mac-Gregor, 'Impact of the Inter-American Jurisprudence on Economic, Social, Cultural, and Environmental Rights' in A. von Bogdandy et al (eds), *The Impact of the Inter-American Human Rights System. Transformations on the Ground* (Oxford: OUP, 2024), 217–36.

[26] 'Article 26. Progressive Development: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires.' This provision is further analysed in s 2.

[27] X. Soley, 'The Transformative Dimension of Inter-American Jurisprudence', in A. von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America* (Oxford: OUP, 2017), 345–46.

In the current context, wherein labour rights have gained increasing recognition within the framework of the IASHR, particularly through the evolving jurisprudence of the Court, this article poses a central research question: *Should informal workers be regarded as a 'vulnerable group' within the Court's jurisprudence?* Given the structural barriers that informal workers routinely confront, such as the absence of social security, precarious employment conditions and restricted access to legal protections and access to justice, this question is pivotal in assessing whether a rights-based framework may afford them enhanced legal protections under the IASHR. Although the Court has acknowledged informality as an aggravating factor, it has yet to adopt a coherent and systematic approach to addressing this complex and multifaceted phenomenon.

To address this question, this article adopts a doctrinal methodology, drawing upon relevant academic literature in conjunction with an analysis of the jurisprudence of the Court. The focus lies specifically on judgments pertaining to ESCER to determine whether the Court has established a jurisprudential foundation for recognising informal workers as a vulnerable group warranting special protection. In this way, this article aligns with labour law scholarship that has already started building the bridge between transformative constitutionalism and labour rights in Latin America.[28] Furthermore, the article also contributes to the longstanding and ever-evolving debate on whether labour rights are human rights.[29] In so doing, the article lays the groundwork for a more nuanced exploration of the intersection between informality, labour rights and human rights law in Latin America, thereby contributing to contemporary debates concerning legal and policy responses to informality across the region.[30]

[28] F. Ebert, 'A Regional Revitalisation of Labour Rights? The Emerging Approach of the Inter-American Court of Human Rights: Possible Global' in B. Langille and A. Trebilcock (eds), *Possible Global Futures: Essays in Honour of Francis Maupain* (Oxford: Hart Publishing, 2023), 227–36; J. Lobato 'Labour Law and Transformative Constitutionalism: Towards Transformative Labour Law in Latin America' (2024) 40 *International Journal of Comparative Labour Law and Industrial Relations* 179.

[29] V. Mantouvalou, 'Are Labour Rights Human Rights?' (2012) 3 *European Labour Law Journal* 151–72.

[30] R. Gali and D. Kucera, 'Labor Standards and Informal Employment in Latin America' (2004) 32 *World Development* 809–28; M. von Broembsen, 'Constitutionalizing Labour Rights: Informal Homeworkers in Global Value Chains' (2018) 34 *International Journal of Comparative Labour Law and Industrial Relations* 257–80; A. Hammer and I. Ness, 'Informal and Precarious Work: Insights Form the Global South' (2021) 24 *Journal of Labor and Society* 1–15; V. Amarante and R. Arim, 'Inequality and Informality Revisited: The Latin American Case' (2023) 162 *International Labour Review* 431–57.

This article is structured into four sections following this introduction. The second section begins by introducing the relevant Inter-American instruments that enshrine labour rights, then traces the evolution of the IACtHR jurisprudence on the direct and autonomous justiciability of such rights and concludes by examining the significance of transformative constitutionalism as a guiding theoretical framework for the Court's interpretative approach. The third section undertakes a critical analysis of the Court's jurisprudence on informality, highlighting instances where the IACtHR has considered it an aggravating factor rather than recognising it as a systemic violation in itself. The article then advances its central argument in Section 4, making a case for the recognition of informal workers as a distinct vulnerable group within the Court's jurisprudence, which would entail specific obligations for the member states to ensure their protection. The fifth section examines the broader implications of formally recognising informal workers as a vulnerable group, emphasising the significance of the Court's case law in shaping domestic legal systems and reinforcing the role of civil society organisations and trade unions in protecting their rights.

2. TRANSFORMATIVE CONSTITUTIONALISM AND THE AUTONOMOUS AND DIRECT JUSTICIABILITY OF LABOUR RIGHTS

A. The Enshrinement of Labour Rights in Inter-American Instruments

From its early stages, the OAS adopted instruments that recognised and sought to protect workers' rights. As Hennebel and Tigroudja observe, two principal categories of standards have emerged within the IASHR aimed at advancing social justice and promoting labour rights. The first consists of policy-oriented standards intended to shape national agendas, while the second involves normative standards that enshrine labour rights within binding legal frameworks.

The first category includes non-legally binding instruments that articulate social policy goals without establishing enforceable obligations. Amongst these, the *Inter-American Charter of Social Guarantees* (1948) played a foundational role, setting out key principles for the protection of workers. Regarded by some as an embryonic yet overly progressive workers' rights instrument, it was highly controversial at the time of its adoption—so much so that the USA voted

against it.[31] In a similar vein, the *Social Charter of the Americas*, adopted in 2012 by the OAS General Assembly, addresses economic, social and cultural rights in broad terms. While not a human rights instrument *per se*, nor intended to ground enforceable claims, the Charter reflects a political commitment to equity and poverty eradication. Notably, it is the only regional instrument that explicitly addresses informal employment. Article 8 affirms that 'the promotion of decent work, the fight against unemployment and underemployment, as well as addressing the challenges of informal labour are essential elements for achieving economic development with equity'. Though lacking legal force, it reinforces the principle of the indivisibility of rights and signals recognition of informality as a critical obstacle to social justice.

The second, and normatively more significant, category includes binding legal instruments that formally incorporate ESCERs, including labour rights, into the Inter-American human rights framework. These include the 1948 *Charter of the Organisation of American States* (OAS Charter), the 1948 *American Declaration of the Rights and Duties of Man* (American Declaration), the 1969 American Convention and the 1988 *Additional Protocol to the American Convention in the Area of Economic, Social and Cultural Rights* ('Protocol of San Salvador').

The OAS Charter, as the organisation's foundational instrument, was primarily designed to establish the institutional framework of the OAS rather than to function as a human rights catalogue. Although it included some general human rights provisions on the subject, its initial scope in this regard was limited.[32] An important shift occurred with the 1967 *Protocol of Buenos Aires*, which transformed the Charter into a treaty-based framework for the promotion and protection of human rights in the inter-American system. The revised text introduced substantive socio-economic obligations for Member States.[33] Article 34(g) commits governments to advancing fair wages, employment opportunities and adequate working conditions.[34] Similarly,

[31] C. Fenwick, 'The Ninth International Conference of American States' (1948) 42 *The American Journal of International Law* 553–67.

[32] T. Buergenthal, 'The Revised OAS Charter and the Protection of Human Rights' (1975) 69 *American Journal of International Law* 828.

[33] Belize, Canada, Cuba, and Guyana have not signed or ratified the Protocol of Buenos Aires.

[34] 'The Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income, and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: (…) g) Fair wages, employment opportunities, and acceptable working conditions for all; (…)'.

Article 45(b) and (c) conceptualise work both as a right and a social duty, mandating safeguards for fair remuneration, collective bargaining and the right to strike.[35] Complementing these commitments, Article 46 calls for the harmonisation of labour and social security laws across developing countries, thereby consolidating the Charter's social dimension and reinforcing its contribution to labour rights.[36]

Since the OAS Charter was not intended to establish a catalogue of human rights, the American Declaration was adopted to fulfil this role. As the first formal catalogue of human rights referenced in the Charter, it provided a comprehensive statement of rights for the IASHR. Initially, the American Declaration was not conceived as a legally binding instrument but rather as a political and moral commitment by Member States. However, in the wake of the 1967 revision of the OAS Charter and, more decisively, through the jurisprudence of the IACtHR, this instrument has come to be recognised as a source of binding international obligations, thereby reinforcing its normative authority within the inter-American human rights framework.[37] It contains a foundational set of rights, including equality and non-discrimination (Article II),[38] the right to work and receive fair wages (Article XIV),[39] and

[35] 'The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: (…) (b) Work is a right and a social duty, it gives dignity to the one who performs it, and it should be performed under conditions, including a system of fair wages, that ensure life, health, and a decent standard of living for the worker and his family, both during his working years and in his old age, or when any circumstance deprives him of the possibility of working; (c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defence and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws; (…)'.

[36] 'The Member States recognize that, in order to facilitate the process of Latin American regional integration, it is necessary to harmonize the social legislation of the developing countries, especially in the labour and social security fields, so that the rights of the workers shall be equally protected, and they agree to make the greatest efforts possible to achieve this goal'.

[37] IACtHR, *Advisory Opinion OC-10/89, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, Series A No 10 (14 July 1989), para 44.

[38] 'Article II. All persons are equal before the law and have the rights and duties established in this Declaration, without distinction as to race, sex, language, creed or any other factor'.

[39] 'Every person has the right to work, under proper conditions, and to follow his vocation freely, insofar as existing conditions of employment permit. Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him a standard of living suitable for himself and for his family'.

freedom of association (Article XXII).[40] This instrument has been of particular importance in cases involving States that are not parties to the American Convention and continues to serve as an interpretative guide in the broader human rights jurisprudence of the IACtHR.

The American Convention itself focuses primarily on civil and political rights, and its procedural architecture limits contentious cases to rights explicitly included within its text. Nonetheless, certain general provisions, such as the prohibition of discrimination (Articles 1 and 24),[41] the prohibition of slavery and servitude (Article 6),[42] the rights of the child (Article 19),[43] and freedom of association (Article 16)[44] have been used to protect workers.[45] A distinctive innovation of the American Convention, absent from its European counterpart, is Article 26, which affirms the progressive realisation of ESCERs, including labour rights, by reference to the standards articulated in

[40] 'Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature'.

[41] 'Article 1. Obligation to Respect Rights: 1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition. 2. For the purposes of this Convention, "person" means every human being'.; and Art 24. Right to Equal Protection: 'All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law'.

[42] 'Article 6. Freedom from Slavery: 1. No one shall be subject to slavery or to involuntary servitude, which are prohibited in all their forms, as are the slave trade and traffic in women. 2. No one shall be required to perform forced or compulsory labour. This provision shall not be interpreted to mean that, in those countries in which the penalty established for certain crimes is deprivation of liberty at forced labour, the carrying out of such a sentence imposed by a competent court is prohibited. Forced labour shall not adversely affect the dignity or the physical or intellectual capacity of the prisoner. (…)'

[43] 'Article 19. Rights of the Child: Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state'.

[44] 'Article 16. Freedom of Association: 1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police'.

[45] For instance: IACtHR, *Case of Baena et al v Panama*, Series C No 72 (2 February 2001) (freedom of association); *Advisory Opinion OC-18/03* (n.17) (prohibition of discrimination); and *Case of the Hacienda Brasil Verde Workers v Brazil*, Series C No 318 (20 October 2016) (freedom from slavery and rights of the child).

the OAS Charter.[46] However, the drafting history of Article 26 reveals the political and legal constraints that shaped its eventual formulation. Earlier proposals had envisaged an explicit enumeration of ESCERs, but resistance from influential Member States led to a compromise: Article 26 would omit a detailed list of rights, refer instead to the Protocol of Buenos Aires, and establish a broad obligation of international cooperation for their progressive realisation.[47] As a consequence, for more than two decades, Article 26 remained largely dormant, underused by the Court, the Commission and petitioners. It was widely viewed as non-justiciable, lacking the normative clarity and precision required to support directly enforceable individual claims.

The adoption of the Protocol of San Salvador in 1988, which entered into force in 2003, sought to redress these limitations by setting out an extensive catalogue of ESCERs in binding form. It highlights the interdependence of civil and socio-economic rights and includes robust protections for labour. Article 6 guarantees the right to work,[48] and Article 7 enumerates, *inter alia*, the right to fair and satisfactory working conditions, including a minimum wage, job security, occupational health and safety, regulated working hours, paid rest and leave.[49] Article 8 further affirms the right to organise trade

[46] 'Article 26: The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, subject to available resources and by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires'.

[47] Hennebel and Tigroudja (n.23), 764–72.

[48] 'Article 6 Right to work: 1. Everyone has the right to work, which includes the opportunity to secure the means for living a dignified and decent existence by performing a freely elected or accepted lawful activity. 2. The State Parties undertake to adopt measures that will make the right to work fully effective, especially with regard to the achievement of full employment, vocational guidance, and the development of technical and vocational training projects, in particular those directed to the disabled. The States Parties also undertake to implement and strengthen programs that help to ensure suitable family care, so that women may enjoy a real opportunity to exercise the right to work'.

[49] 'Article 7 Just, equitable, and satisfactory conditions of work: The States Parties to this Protocol recognize that the right to work to which the foregoing article refers presupposes that everyone shall enjoy that right under just, equitable, and satisfactory conditions, which the States Parties undertake to guarantee in their internal legislation, particularly with respect to: a. Remuneration which guarantees, as a minimum, to all workers dignified and decent living conditions for them and their families and fair and equal wages for equal work, without distinction; b. The right of every worker to follow his vocation and to devote himself to the activity that best fulfills his expectations and to change employment in accordance with the pertinent national regulations; c. The right of every worker to promotion or upward mobility in his employment, for which purpose account shall be taken of his qualifications, competence, integrity and seniority; d.

unions and the right to strike.[50] Despite its normative richness, the Protocol's adjudicative potential is significantly limited by Article 19(6), which restricts access to the Court to violations concerning only two rights: freedom of association (Article 8 (1)(a)) and the right to education (Article 13).[51] Consequently, individual labour rights, enshrined in Article 7, as well as the right to strike (Article 8(1)(b)), would remain, in principle, beyond the reach of the Court's jurisdiction. Moreover, the Protocol does not position itself as an elaboration of Article 26 of the Convention. It neither references the OAS Charter in this respect nor claims interpretive alignment with the broader Convention framework. The absence of an explicit linkage further complicates the coherence of the system and perpetuates uncertainty regarding the enforceability of ESCERs, including labour rights.[52]

In sum, while labour rights have been progressively recognised within the Inter-American normative framework, their effective justiciability has long

Stability of employment, subject to the nature of each industry and occupation and the causes for just separation. In cases of unjustified dismissal, the worker shall have the right to indemnity or to reinstatement on the job or any other benefits provided by domestic legislation; e. Safety and hygiene at work; f. The prohibition of night work or unhealthy or dangerous working conditions and, in general, of all work which jeopardizes health, safety, or morals, for persons under 18 years of age. As regards minors under the age of 16, the work day shall be subordinated to the provisions regarding compulsory education and in no case shall work constitute an impediment to school attendance or a limitation on benefiting from education received; g. A reasonable limitation of working hours, both daily and weekly. The days shall be shorter in the case of dangerous or unhealthy work or of night work; h. Rest, leisure and paid vacations as well as remuneration for national holidays'.

[50] 'Article 8 Trade union rights: 1. The States Parties shall ensure: a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely; b. The right to strike. 2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law. 3. No one may be compelled to belong to a trade union'.

[51] 'Article 19 Means of protection: (…) 6. Any instance in which the rights established in paragraph a) of Article 8 and in Article 13 are violated by action directly attributable to a State Party to this Protocol may give rise, through participation of the Inter-American Commission on Human Rights and, when applicable, of the Inter-American Court of Human Rights, to application of the system of individual petitions governed by Article 44 through 51 and 61 through 69 of the American Convention on Human Rights'.

[52] Hennebel and Tigroudja (n.23), 761.

been constrained by institutional and procedural limitations. The restricted scope of adjudication under the American Convention, combined with the narrow standing provisions of the Protocol of San Salvador, helps explain the historical reluctance of the Court to engage substantively with labour rights. Nonetheless, the evolving jurisprudence, particularly the recognition of Article 26 as a source of directly justiciable rights, signals an important shift towards a more robust protection of workers' rights within the IASHR.

B. Jurisprudential Developments in the Court's Approach to Labour Rights

From its creation in 1979 until the early 2000s, the IACtHR was virtually silent on the protection of labour rights. During this initial phase, the Court avoided engaging directly with the normative content of labour standards and offered no systematic interpretation of workers' rights as such.[53] The only notable exceptions were *Godínez Cruz v Honduras* and *Caballero Delgado and Santana v Colombia*, cases involving the disappearance of trade unionists, where the Court examined violations of the rights to life (Article 4), the right to humane treatment (Article 5) and personal liberty (Article 7) under the American Convention. Significantly, however, they did not address Article 16, which protects freedom of association, thereby illustrating its reluctance to frame the case within a labour rights context.[54]

A doctrinal shift began with *Baena v Panama* (2001), a landmark judgment concerning the dismissal of 270 public employees for their involvement in a strike. In that case, the Court expressly recognised a violation of Article 16 of the American Convention, thereby affirming the right to freedom of association in the labour context. This judgment marked a jurisprudential turning point, establishing the foundational recognition of labour rights as susceptible to direct protection under the Convention.[55] This interpretive trajectory continued in cases such as *Ituango Massacres v Colombia*[56] and *Hacienda Brasil Verde Workers v Brazil*,[57] where the Court invoked Article 6 (prohibition of slavery and forced labour) to condemn exploitative labour practices.

[53] Mac-Gregor (n.25), 218, 224; P. G. Domínguez, 'La protección directa de los derechos laborales en la jurisprudencia de la Corte Interamericana de Derechos Humanos' Armin von Bogdandy et al (eds), *La dimensión laboral del constitucionalismo transformador en América Latina* (Bogotá: Ediciones Uniandes, 2024), 227–28.

[54] IACtHR, *Case of Godínez Cruz v Honduras*, Series C No 5 (20 January 1989); *Case of Caballero Delgado and Santana v Colombia*, Series C No 22 (8 December 1995).

[55] *Baena v Panama* (n.45).

[56] IACtHR, *Case of The Ituango Massacres v Colombia*, Series C No 148 (1 July 2006).

[57] *Hacienda Brasil Verde* (n.45).

Between 2001 and 2017, the Court also employed an 'indirect' approach to labour rights, relying heavily on civil and political guarantees, most notably equality and non-discrimination, the right to a fair trial (Article 8) and judicial protection (Article 25), to protect workers' rights.[58] This method, although incrementally protective, perpetuated the bifurcation between civil-political and socio-economic rights.[59] Labour rights, while acknowledged, were not yet firmly rooted as autonomous legal entitlements within the Court's jurisprudence, a position exacerbated by the vague wording of Article 26 of the American Convention and the ongoing uncertainty surrounding its justiciability.

A decisive jurisprudential shift occurred with *Lagos del Campo v Peru* (2017), marking a turning point in the Court's approach to ESCERs. In this landmark judgment, the Court explicitly recognised the autonomous and directly justiciable nature of ESCERs under Article 26 of the American Convention.[60] While acknowledging that Article 26 calls for the progressive realisation of these rights, the Court highlighted its placement in Part I of the American Convention, alongside civil and political rights, and affirmed that it is therefore subject to the general obligations imposed on State parties by Articles 1 and 2. On this basis, the Court asserted its competence to adjudicate alleged violations of Article 26, thereby inaugurating a new era of enforceability for social rights within the IASHR.

However, the substantive contours of Article 26 remain undefined, as it does not enumerate specific rights. To address this ambiguity, the Court has interpreted Article 26 in light of other Inter-American instruments, most notably the OAS Charter, which recognises work as a right that must be

[58] IACtHR, *Case of Acevedo Jaramillo and others v Peru*, Series C No 144 (7 February 2006); *Case of Dismissed Congressional Employees (Aguado Alfaro et al) v Peru*, Series C No 296 (24 November 2006); *Case of Canala Huapaya and others v Peru*, Series C No 296 (24 June 2015). For a more detailed analysis, see: P. G. Domínguez, 'Los aportes del caso Cuscul Pivaral y otros vs. Guatemala a la jurisprudencia de la Corte Interamericana en materia de derechos económicos, sociales, culturales y ambientales' in M. Morales Antoniazzi, L. Ronconi and L. Clérico (eds), *Interamericanización de los DESCA. El caso Cuscul Pivaral de la Corte IDH* (Querétaro: Instituto de Estudios Constitucionales, 2020), 154–5; Mac-Gregor (n.25).

[59] This concern—equally applicable to the IASHR—was articulated by Virginia Mantouvalou in relation to the European Court of Human Rights' jurisprudence on labour rights in 'Labour Rights in the European Convention on Human Rights: An Intellectual Justification for an Integrated Approach to Interpretation' (2013) 13 *Human Rights Law Review* 529, 547.

[60] For some general analysis, see: F. Ebert and C. Fabricius, 'Strengthening Labor Rights in the Inter-American Human Rights System' (2018) 4 *International Labor Rights Case Law* 179; Montejo (n.18), 350–5; R. Kalil and M. Pucheta, 'Argentina: The Right to Fair and Satisfactory Working Conditions Through the Lens of the Inter-American Court of Human Rights' (2021) 32 *Comparative Labor Law & Policy Journal Dispatches* 1–9; Lobato (n.28), 179; Mac-Gregor (n.25), 217; Domínguez (n.53), 223–50.

performed under fair conditions and with dignity. On this basis, the Court has articulated a substantive framework for labour rights, encompassing the rights to job stability, fair and satisfactory working conditions and equality in the workplace.[61] In *Lagos del Campo* and subsequent cases, the Court further linked Article 26 with the American Declaration, using this connection to ground labour protections more firmly within the Inter-American normative system.[62]

Given the imprecise and open-ended formulation of labour rights within the American Convention and related instruments, the Court has adopted an expansive interpretative strategy grounded in Article 29 of the Convention.[63] This provision, which enshrines *pro persona* and systemic interpretative principles, has enabled the Court to transcend the confines of the Inter-American *corpus juris* and draw extensively on 'external' legal sources to clarify the content and scope of labour rights. Since the early 2000s, the Court has systematically incorporated international and comparative materials to build a coherent normative framework. In particular, it has drawn heavily on ILO Conventions and Recommendations, as well as the decisions of the ILO's Committee on Freedom of Association and Committee of

[61] IACtHR, *Case of Lagos del Campo v Peru*, Series C No 340 (31 August 2017), para 143; *Case of Dismissed Employees of Petroperú et al v Peru*, Series C No 344 (23 November 2017), para 192; *Case of San Miguel Sosa et al v Venezuela*, Series C No 348 (8 February 2018), para 211; *Case of Casa Nina v Peru*, Series C No 419 (24 November 2020), paras 104–5; *Case of Palacio Urrutia et al v Ecuador*, Series C No 446 (23 November 2021), para 153; *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v Peru*, Series C No 448 (1 February 2022), para 108; *Case of Pavez Pavez v Chile*, Series C No 449 (4 February 2022), para 87; *Case of Mina Cuero v Ecuador*, Series C No 464 (7 September 2022), para 127; *Case of Benites Cabrera et al v Peru*, Series C No 465 (4 October 2022), paras 110–1.

[62] In its *Advisory Opinion OC-10/89* (n.37), the IACtHR affirmed that 'the member states of the Organization have expressed their agreement that the Declaration contains and defines the fundamental human rights referred to in the Charter'. For further analysis see: Eduardo Ferrer Mac-Gregor, Mariela Morales Antoniazzi and Rogelio Flores Pantoja (eds), *Inclusión, Ius Commune y justiciabilidad de los DESCA en la jurisprudencia interamericana. El caso Lagos del Campo y los nuevos desafíos* (Querétaro: Instituto de Estudios Constitucionales, 2018).

[63] 'No provision of this Convention shall be interpreted as: a. permitting any State Party, group, or person to suppress the enjoyment or exercise of the rights and freedoms recognized in this Convention or to restrict them to a greater extent than is provided for herein; b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party; c precluding other rights or guarantees that are inherent in the human personality or derived from representative democracy as a form of government; or d. excluding or limiting the effect that the American Declaration of the Rights and Duties of Man and other international acts of the same nature may have'.

Experts on the Application of Conventions and Recommendations.[64] The Court has also relied significantly on the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the General Comments of the UN Committee on Economic, Social and Cultural Rights (CESCR) to interpret and give substance to labour rights as protected under the Inter-American system.[65] As Judge Ferrer Mac-Gregor notably observed in his reasoned opinion in *Spoltore v Argentina*: '[i]t is particularly relevant to underline the fundamental role played by the General Comments of the Committee of Economic, Social and Cultural Rights since 2017 in the *Lagos del Campo* case in giving content to the rights that can be identified through Article 26 of the Pact of San José.'[66]

Furthermore, the Court has occasionally drawn upon other international legal instruments and comparative jurisprudence, in particular, the European Social Charter (ESC)[67] and the case law of the European Court of Human Rights (ECtHR),[68] not only as persuasive authorities but also as a means of reinforcing the idea that the labour rights it protects form part of the broader *international corpus iuris*. By referencing these sources, the Court situates its interpretation of labour rights within a global framework of human rights protection, thereby affirming the normative convergence around the recognition of such rights in international and regional legal systems.

Through this transformative and systemic approach, the Court has progressively recognised an expanding catalogue of labour rights as enforceable under the Inter-American system. These include the right to work and job security,[69] the right to fair and satisfactory working conditions,[70] equal

[64] See: B. Duhaime and É. Décoste, 'From Geneva to San José: The ILO Standards and the Inter-American System for the Protection of Human Rights' (2020) 159 *International Labour Review* 527–30; Kalil and Pucheta (n.18), 178–80; M. Pucheta and R. Kalil, 'Ch 17. The Inter-American Court of Human Rights: A Catalyst for International Labour Standards' in A. Blackham and S. Cooney (eds), *Research Methods in Labour Law: A Handbook* (Cheltenham: Edward Elgar, 2024), 271–84.

[65] Hennebel and Tigroudja (n.23), 785. For example: IACtHR, *Case of Spoltore v Argentina*, Series C No 404 (9 June 2020), paras 83, 94, 96, and 97; *Fireworks Factory v Brazil* (n.17), paras 166–8, 185, and 188.

[66] *Spoltore v Argentina* (n.65), Reasoned Opinion of Judge Ferrer Mac-Gregor, para 31.

[67] *Lagos del Campo* (n.61), para 145; *Advisory Opinion OC-27/21, Right to Freedom of Association, Right to Collective Bargaining and Right to Strike, and Their Relation to Other Rights, with a Gender Perspective*, Series A No 27 (5 May 2021), para 62.

[68] *Hacienda Brasil Verde* (n.45), paras 263–4, 2279–80; *Case of Members of the Consolidated Workers Union of ECASA (SUTECASA) v Peru*, Series C No 526 (6 June 2024), para 198.

[69] *Lagos del Campo* (n.61).

[70] *Fireworks Factory v Brazil* (n.17).

opportunity and treatment in employment,[71] freedom of association,[72] collective bargaining,[73] and the right to strike.[74] Such developments are particularly significant in Latin America and the Caribbean, where deeply entrenched socio-economic inequalities, high levels of informality and institutional fragility render labour rights especially vulnerable.

C. Social Rights and the 'Transformative' Role of the Inter-American Judge

Transformative constitutionalism denotes a distinctive interpretative paradigm within both constitutional and international law. It aspires to recalibrate entrenched social, political and economic structures with a view to fostering a more democratic and egalitarian society—one in which human rights are not merely acknowledged, but are actively respected, protected and fully realised.[75] As Klare articulates, transformative constitutionalism entails 'an enterprise of inducing large-scale social change through non-violent political processes grounded in law', highlighting its reliance on legal mechanisms to effectuate profound societal transformation.[76] This jurisprudential approach has been notably adopted in several jurisdictions, most prominently in South Africa, India and Colombia.[77]

In Latin America and the Caribbean, the ICCAL project serves as a regional expression of transformative constitutionalism, distinguished by its regional scope.[78] Unlike approaches confined to a national framework, ICCAL integrates legal principles from the OAS member countries and aligns them with the IASHR, fostering a cohesive regional commitment to human rights.[79]

[71] *Pavez Pavez v Chile* (n.61).
[72] *Advisory Opinion OC-27/21* (n.67).
[73] *SUTECASA v Peru* (n.68).
[74] IACtHR, *Case of the Former Employees of the Judiciary v. Guatemala*, Series C No 445 (17 November 2021).
[75] K. van Marle, 'Transformative Constitutionalism as/and Critique' (2009) 20 *Stellenbosch Law Review* 286; A. von Bogdandy et al, 'Introduction' in A. von Bogdandy et al (eds), *The Impact of the Inter-American Human Rights System. Transformations on the Ground* (Oxford: OUP, 2024), 2.
[76] K. E. Klare, 'Legal Culture and Transformative Constitutionalism' (1998) 14 *South African Journal on Human Rights* 146, 150.
[77] T. Roux, 'A Brief Response to Professor Baxi' in O. Vilhena, U. Baxi and F. Viljoen (eds), *Transformative Constitutionalism: Comparing the Apex Courts of Brazil, India and South Africa* (Johannesburg: PULP, 2013), 48–52; J. E. Roa-Roa and J. J. Aristizábal, 'Confronting Vulnerability and Discrimination before Courts: Egalitarian Transformative Constitutionalism in the Constitutional Court of Colombia' Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 2024-19.
[78] A. von Bogdandy et al, *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: OUP, 2017).
[79] von Bogdandy et al (n.75), 2.

ICCAL performs a normative function aimed at the effective realisation of the promises enshrined in national constitutions. Its objective is 'to diffuse human rights standards in the region, to compensate for national deficits, and empower social actors to work for legislative and practical change'.[80] The ICCAL emphasises the imperative to confront several critical challenges facing the region, including social exclusion, poverty and entrenched economic inequality. In this context, transformative constitutionalism serves as a normative framework that urges us to meaningfully engage with and address the persistence of informal labour practices, which perpetuate systemic marginalisation.[81]

While the judiciary is not the sole guardian of rights, it plays a crucial role in their enforcement, with judicial decisions exerting considerable influence over broader social dynamics.[82] As Rodriguez-Garavito posits, judicial decisions help to construct the political terrain for future social struggles, either facilitating or constraining policy reforms and public mobilisation.[83] These rulings can catalyse social transformations not only for the litigants directly involved but also by indirectly altering broader social relations.[84]

Nonetheless, transformative legal approaches do not replace social and political movements; rather, they complement them. As articulated by Piovesan, 'its transformative impact in the region, resulting above all from the vital role played by organized civil society in its struggle for justice and rights, is fomented by the effectiveness of the regional-local dialogue in a multilevel system with mutual openness and permeability'.[85] However, it is important to remain vigilant about the potential risks of top-down changes, especially in

[80] A. von Bogdandy et al, 'Ius Constitutionale Commune en América Latina. A Regional Approach to Transformative Constitutionalism' in A. Von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: OUP, 2017), 4; J. E. Roa-Roa, 'El rol del juez constitucional en el constitucionalismo transformador latinoamericano' Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper No 2020-11.

[81] A. von Bogdandy et al, 'La dimensión laboral del constituiconalismo transformador en América Latina: una introducción' in A. von Bogdandy et al (eds), *La dimensión laboral del constitucionalismo transformador en América Latina* (Bogotá: Ediciones Uniandes, 2024), 4.

[82] P. S. Ugarte, 'The Struggle for Rights and the Ius Constitutionale Commune' in A. Von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: OUP, 2017), 71–2.

[83] C. Rodríguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America' (2011) *Texas Law Review* 1669, 1678.

[84] Ibid.

[85] F. Piovesan, 'Ius Constitutionale Commune en América Latina. Context, Challenges, and Perspectives' in A. Von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: OUP, 2017), 65.

the context of international adjudication. Gargarella cautions that international judges have often limited engagement with the affected communities. Moreover, 'regular' citizens have limited access to these tribunals, and there are scant popular control mechanisms over these judges.[86]

At the core of ICCAL's development lies the instrumental role of the IASHR in giving full effect to the broad spectrum of rights enshrined in its foundational instruments.[87] While the IACtHR had recognised certain ESCERs between 1979 and 2017, the Court's jurisprudence underwent a decisive shift with its landmark judgment in *Lagos del Campo v Peru* (2017) Guided by a literal, systematic and teleological reading of the American Convention and inspired by this transformative approach,[88] affirmed for the first time the autonomous and directly justiciable nature of ESCERs under Article 26. The Court framed this interpretive shift as essential to achieving the Convention's broader objective: to consolidate a regime of personal liberty and social justice based on respect for the essential human rights recognised in the OAS Charter. This doctrinal evolution has been deeply influenced by the Latin American approach to transformative constitutionalism, which advocates for the use of constitutional and judicial interpretation as a catalyst for social change and structural reform.[89]

The Court's transformative approach has also shaped the remedy system, which goes beyond mere monetary compensation to promote the genuine enjoyment of human rights.[90] It seeks not only to remedy individual wrongs but also to address systemic deficiencies, often stemming from weak institutions that perpetuate insecurity, impunity, or corruption, thereby promoting the establishment of genuine constitutional democracy.[91] Moreover, the Court pays particular attention to 'vulnerable groups' in the region, especially those living under abject conditions.[92] This is particularly important to the world of

[86] R. Gargarella, 'The "New" Latin American Constitutionalism Old Wine in New Skins' in A. Von Bogdandy et al (eds), *Transformative Constitutionalism in Latin America. The Emergence of a New Ius Commune* (Oxford: OUP, 2017), 232–3.

[87] A. von Bogdandy and R. Urueña, 'International Transformative Constitutionalism in Latin America' (2020) 114 *The American Journal of International Law* 408.

[88] IACtHR, *Case of Cuscul Pivaral et al v Guatemala*, Series C No 359 (23 August 2018).

[89] von Bogdandy and Urueña (n.87).

[90] See: Soley (n.27), 339; R. Urueña, 'Democracy and Human Rights Adjudication in the Inter-American Legal Space' in P. Zumbansen (ed.), *The Oxford Handbook of Transnational Law* (Oxford: OUP, 2021).

[91] von Bogdandy et al (n.75) 3.

[92] von Bogdandy et al (n.80) 6; M. M. Hernández, 'Diálogo, interamericanización e impulso transformador: los formantes teóricos del Ius Constitutionale Commune en América Latina' (2021) 11 *Revista Brasileira de Políticas Públicas* 337, 346.

work and the protection of workers' rights in the region, given their precariousness and vulnerability.

Transformative constitutionalism, which aims to respect, protect and realise human rights through a normative interpretation that fosters structural reforms in deeply unequal societies, prioritises vulnerable groups. Within the realm of labour, informal workers serve as a salient example. Their frequent lack of access to minimum labour standards highlights the necessity for state-led structural interventions to secure the effective exercise of their labour rights, a key imperative within the framework of transformative constitutionalism.

3. INFORMALITY AND THE INTER-AMERICAN COURT OF HUMAN RIGHTS JURISPRUDENCE: A 'MERE' AGGRAVATING FACTOR

The jurisprudence of the Court has increasingly engaged with the issue of informality in labour relations. However, rather than recognising informality as a systemic violation of human rights in itself, the Court has primarily framed it as an aggravating factor—a condition that exacerbates the vulnerability of affected workers. This section traces the evolution of landmark judgments in which informality has been acknowledged in this manner and assesses the implications of this judicial approach.

A. Advisory Opinion OC-18/03

The first time the Court addressed this topic occurred in *Advisory Opinion OC-18/03*, delivered in September 2003, concerning juridical condition and rights of undocumented migrants. Mexico submitted a request for an advisory opinion on the deprivation of the enjoyment and exercise of labour rights of undocumented migrant workers and its compatibility with the obligation of the American States to ensure the principles of legal equality, non-discrimination and the equal and effective protection of the law embodied in international instruments for the protection of human rights.[93]

In its analysis of the legal status of these workers, the Court observed that migrants are frequently in a position of vulnerability as subjects of human rights, owing to an inherent power imbalance with non-migrants—a condition further exacerbated by both de jure and de facto inequalities that limit their access to state-administered resources.[94] This situation is further reinforced

[93] *Advisory Opinion OC-18/03* (n.17), para 1.
[94] Ibid., para 112.

by societal prejudices, including xenophobia and racism.[95] It also highlighted the vulnerability of migrant workers compared to national workers, especially regarding working conditions.[96]

The Court has emphasised that labour rights derive from the very condition of being a worker, a concept to be interpreted in its broadest possible sense.[97] Traditionally, the Court considered that any individual engaged in remunerated activity acquires the legal status of a worker, irrespective of their migratory situation, and is thereby entitled to the full spectrum of labour-related human rights.[98] Most recently, the Court has gone a step further by affirming that this broad notion of work also encompasses non-remunerated activities, and that the Inter-American and wider international *corpus iuris*, with particular reference to ILO Recommendation No. 204, extends protection to formal, autonomous and informal workers alike.[99] The State bears a primary obligation to guarantee and respect labour rights in all forms of employment, whether regulated by public or private law; this duty encompasses its role as an employer of public officials, regardless of their legal classification, and entails a positive obligation to ensure the effective enjoyment of these rights in the private employment sphere.[100]

Judge Cançado Trindade, in his concurring opinion, explains that undocumented migrant workers are in a situation of great vulnerability, as pointed out by the Court, considering they are more exposed to precarious employment in the informal economy, labour exploitation, unemployment and poverty.[101] The vulnerability experienced by undocumented migrant workers stems from their lack of authorisation to enter, stay and engage in remunerated activities in the State of employment. Consequently, they are often compelled to accept substandard working conditions—usually in the informal economy—from employers seeking to exploit their precarious situation to maximise profit. This lack of formal status further discourages these workers from seeking legal recourse from public authorities for fear of reprisal and deportation.[102]

[95] Ibid., para 113.
[96] Ibid., paras 131–2.
[97] Ibid., para 133.
[98] Ibid., para 133
[99] IACtHR, *Advisory Opinion OC-31/25, Right to care and its interrelation with other rights*, Series A No 31 (12 June 2025), paras 214, 229.
[100] Ibid., paras 138–40.
[101] *Advisory Opinion OC-18/03* (n.17), Concurring Opinion of Judge Cançado Trindade, para 15.
[102] *Advisory Opinion OC-18/03* (n.17), para 69; and Concurring Opinion of Judge Cançado Trindade, paras 13–6.

B. Workers of the Fireworks Factory of *Santo Antônio de Jesus v Brazil*

The case of *Workers of the Fireworks Factory of Santo Antônio de Jesus v Brazil*, delivered in July 2020, concerns the 11 December 1998 explosion at the 'Vardo dos Fogos' factory in that region of Bahia, which led to 64 fatalities, primarily amongst marginalised populations. This tragedy exposed severely precarious labour conditions endured by the victims, the majority of whom were Black women and children. Specifically, the blast claimed the lives of 40 women, 19 girls and 1 boy, with 63 of the deceased being female and the single male victim an 11-year-old. Amongst the victims were 22 children and adolescents aged 11 to 17. Racial disparities were stark, as 49 of the 57 identified bodies were of Black individuals. Furthermore, four pregnant women and three unborn children perished in the explosion. These workers, including children, laboured for extensive hours for sub-minimum wages in notoriously unsafe conditions.[103]

The precarious and informal employment conditions of the 60 workers who perished in the explosion at the fireworks factory in Santo Antônio de Jesus, as mentioned above, were critical in the Court's determination that Brazil had violated their right to just and favourable working conditions as part of the right to work.[104] Furthermore, the Court recognised that the company where the explosion occurred was a small private corporation operating within the informal economy. Despite holding the necessary administrative permission for operation, the company hired Afro-descendant women and some of their children informally through verbal agreements, without any formal employee registration.[105]

Despite legal requirements mandating state inspection of such hazardous industrial activities, the Brazilian State demonstrably failed to adequately inspect and monitor the factory, which exhibited serious irregularities and posed a high and imminent danger to the life and health of its workers, including the unlawful use of child labour, thereby violating fundamental labour rights and principles of equality and non-discrimination. The population was aware of the factory's neglect of safety, rendering the explosion a foreseeable consequence of systemic failures in oversight and enforcement.[106]

[103] *Fireworks Factory v Brazil* (n.17), paras 61–81.
[104] Ibid., para 174.
[105] Ibid., paras 64 and 70.
[106] Ibid., paras 61–81.

The Court examined the socioeconomic context of fireworks production in Santo Antônio de Jesus, a historically significant activity in the region and a primary source of income and employment for marginalised populations living in poverty.[107] The development of this industry was characterised by a high degree of informality, resulting in exclusion from formal employment and labour rights, precarious working conditions, clandestine operations and the prevalent use of child and female labour.[108] The lack of access to formal education and infrastructure, and a prevalence of people with a low level of schooling and low earnings, constituted a structural problem that generates and perpetuates informal and precarious labour within the community.[109]

The fact that 'Vardo dos Fogos' was a small private enterprise operating in the informal economy did not diminish its responsibility to respect human rights. Drawing upon the understanding of the Working Group on Human Rights and Transnational Corporations and Other Business Enterprises[110]—used to develop the content of the UN CESCR General Comment No. 23 on the right to just and favourable conditions of work that recognises this right to everyone, including workers in the informal sector—the Court found that the State failed in its duty to ensure just and favourable working conditions by not preventing foreseeable occupational accidents.[111] This obligation was particularly critical given the scale of the incident, which resulted in grave violations of the workers' right to life and personal integrity. While Brazil had regulated the fireworks factory's activities, it neglected to adequately oversee and control the workplace conditions, a necessary step in preventing such accidents. This oversight occurred despite labour regulations mandating state supervision, especially for inherently dangerous activities. Consequently, the State violated the right enshrined in Article 26 of the American Convention.[112]

In specifically addressing the issue of child labour, the Court took into consideration General Comment No. 16 of the Committee on the Rights of the Child on state obligations regarding the impact of the business sector on children's rights.[113] This comment indicates that informality is associated with

[107] Ibid., paras 56, 57, and 67.
[108] Ibid., paras 65 and 67.
[109] Ibid., para 64.
[110] CESCR, General Comment No 23: The right to just and favourable conditions of work, UN Doc E/C.12/GC/23, April 27, 201, para 5.
[111] *Fireworks Factory v Brazil* (n.17), para 142.
[112] Ibid., para 176.
[113] Committee on the Rights of the Child, General Comment No 16: State obligations regarding the impact of the business sector on children's rights. UN Doc CRC/C/GC/16, 17 April 2013, para 35.

precarious employment, inadequate remuneration, health risks, lack of social security, restrictions on trade union freedoms and insufficient protection against discrimination, violence and exploitation.[114] The Court concluded that the State failed to uphold its obligations under Article 19, in conjunction with Article 26 of the American Convention, concerning the deceased and surviving children of the fireworks factory explosion.[115]

Moreover, when examining the pattern of structural discrimination in which the victims were embedded,[116] the Court considered that the fireworks production activity took place in a region marked by poverty, where employment with these companies was the primary—and in many cases, the only—available labour option.[117] In this context, a direct relationship could and can be identified between the poverty experienced by individuals and their engagement in informal and precarious work. Such employment constitutes part of the economic and social disadvantages that contributed to the victimisation of the workers.[118] The Court concluded that the victims' poverty, aggravated by intersecting forms of discrimination, exacerbated their vulnerability in several ways. Firstly, it facilitated the establishment and operation of a factory engaged in a particularly hazardous activity without any state oversight regarding the inherent dangers or occupational health and safety. Secondly, this context compelled the victims, including their underage children, to accept work that jeopardised their lives and well-being. Furthermore, the State failed to take adequate measures to ensure substantive equality in the right to work for a marginalised group of women facing discrimination. Consequently, the Court determined that the State failed to guarantee the right to just and favourable working conditions, without discrimination, as well as the right to equality as enshrined in Articles 24 and 26, in conjunction with Article 1(1) of the American Convention.[119]

Considering the particularities of the local labour market, the ruling also stood out for its comprehensive approach to remedies, which extended

[114] *Fireworks Factory v Brazil* (n 17), para 167.
[115] Ibid., paras 177–81.
[116] For an in-depth analysis of structural discrimination, see: M. Aldao, L. Clerico and L. Ronconi, 'A Multidimensional Approach to Equality in the Inter-American Context: Redistribution, Recognition, and Participatory Parity' in A. von Bogdandy et al (eds) *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (Oxford: OUP, 2017), 83–96; C. Gebruers, 'From Structural Discrimination to Intersectionality in the Inter-American System of Human Rights: Unravelling Categorical Framings' (2023) 20 *The Age of Human Rights Journal* e7629.
[117] *Fireworks Factory v Brazil* (n.17), para 189.
[118] Ibid., para 190.
[119] Ibid., para 203.

beyond compensation for individual victims and their families. The Court ordered structural measures, including the implementation of public policies, to prevent similar violations and address systemic conditions that enable exploitative labour practices.[120] This programme aimed to encourage alternative economic activities and provide solutions to the lack of employment opportunities, with a particular focus on youths over the age of 16 and Black women living in poverty.[121]

C. *Miskito Divers v Honduras*

The *Miskito Divers v Honduras* judgment, delivered in August 2021, concerns a series of tragic events between 1992 and 2003 in the Department of 'Gracias a Dios', Honduras, where the Miskito Indigenous community, engaged in diving as their primary occupation, suffered severe human rights violations. Within this period, 42 Miskito divers and their families were affected by these incidents. Specifically, deep-sea diving resulted in injuries, including decompression sickness, for 34 divers, tragically causing 12 deaths. Additionally, a separate explosion of a butane tank on the 'Lancaster' boat led to the deaths of seven Miskito divers. This was further aggravated by the abandonment of a child in a small canoe (*cayuco*) by a boat owner, whose fate remains undetermined.[122]

The Court noted that the diving activities undertaken by the victims were informal, as there were no employment contracts with the fishing companies.[123] The conditions under which the work was performed—precarious, unhealthy and unsafe—on vessels that did not provide safety for such hazardous activities exposed the workers to the risk of occupational accidents.[124] The IACtHR found that the State failed to fulfil its obligation to guarantee just, equitable and satisfactory working conditions, ensuring the safety, health and hygiene of workers, by not preventing occupational accidents and ensuring acceptable, quality work for the victims in this case. This failure is particularly significant considering the profound impact on the lives and personal integrity of the divers, who suffered illnesses and disabilities as a result. Moreover, the State permitted a child to undertake work that posed a severe risk to his health and life.

[120] Ibid., paras 289–90.
[121] Ibid., Concurring opinion of Judge Pazmiño Freire, para 3.
[122] IACtHR, *Case of the Miskito Divers (Lemoth Morris et al) v Honduras*, Series C No 432 (31 August 2021), paras 27–39.
[123] Ibid., para 96.
[124] Ibid., para 76.

While Honduras regulated the victims' work, it failed to effectively implement these regulations, neglecting to exercise necessary control and oversight over working conditions to prevent accidents and ensure just and favourable conditions. This occurred despite the State's obligation to supervise such conditions, especially in dangerous activities. Therefore, the State violated Article 26 of the American Convention, in conjunction with Articles 1(1) and 2.[125]

Although the Court did not explicitly define precarious work, the characterisation of the divers' activities allows us to consider it as labour performed under contractual informality, with understaffed teams and labour exploitation, involving shifts of 12 to 17 days without rest and low remuneration.[126] The Court mandated comprehensive remedies, requiring Honduras to integrate Miskito divers and their families into social programmes designed for individuals in situations of extreme social exclusion.[127] Additionally, Honduras was ordered to implement measures ensuring adequate regulation, monitoring and supervision of industrial fishing companies' activities within the Miskito territory.[128]

D. Advisory Opinion OC-27/21 and Advisory Opinion OC-31/25

Advisory Opinion OC-27/21, delivered in May 2021, requested by the Commission, examined the scope of State obligations under the IASHR concerning the rights to freedom of association, collective bargaining and strike action, and their interrelationship with other rights from a gender perspective.[129] Although informality was not the principal focus, the Court addressed it from multiple angles. It first acknowledged that the informal economy constitutes a barrier to the enjoyment of workers' rights, including trade union rights, and identified two matters that merit particular attention: (i) the dispersed and fragmented nature of informal labour activities, which impedes the formation of collective identities and the coordination of collective action; and (ii) the stigma attached to certain forms of work, such as waste picking and sex work, which deters workers from publicly disclosing their occupations.[130] In this context, the Court emphasised that States must adopt measures to

[125] Ibid., para 78.
[126] Ibid., paras 35 and 38.
[127] Prior to the Court's judgment, a friendly settlement was reached between the victims and the Honduran state. Honduras acknowledged its international responsibility and agreed to comprehensive reparation.
[128] *Miskito Divers* (n.122), para 162.6, j and k.
[129] *Advisory Opinion OC-27/21* (n.67), paras 1–4.
[130] Ibid., para 182.

ensure the exercise of trade union rights during the transition from the informal to the formal economy.[131]

The Court further characterised the informal sector as one in which wages are generally lower, legal protections are weaker and workers' capacity to organise is significantly undermined.[132] In addressing care work, it stressed the importance of extending maternity, paternity and parental leave to informal workers and adopting measures to ensure the effectiveness of such entitlements.[133] The Court also noted that technological change in the world of work has generated new challenges, including heightened employment precariousness and the expansion of informality.[134] In his concurring opinion, Judge Sierra Porto observed that, despite recognising the need to protect the rights of informal workers, particularly those in vulnerable or stigmatised situations, the Court failed to address how trade union rights might be exercised by those outside subordinate employment relationships.[135]

In the more recent *Advisory Opinion OC-31/25*, delivered in June 2025, the Court recognised the right to care, to provide care to others, to receive care and to self-care as a human right, affirming that caregiving—whether paid or unpaid—is integral to human dignity and must be legally recognised and protected. In its analysis of care work in the region, the Court highlighted that it is predominantly undertaken by women and migrants, the majority of whom are engaged in informal employment under precarious conditions and for very low wages.[136] It attributed the informality of such work to its historical undervaluation, relegation to the private sphere and entrenchment in gender stereotypes. The Court held that paid care work must be afforded the full guarantees derived from the right to work, both at national and international levels, under conditions that are just, equitable, satisfactory and free from discrimination.[137] Care work was also linked to the healthcare sector, with the Court underscoring the obligation of States to protect the rights of healthcare workers, particularly doctors and nurses, to fair and satisfactory working conditions, including those operating in the informal economy.[138] The Court reiterated the importance of workers' voices, freedom of association and collective bargaining as essential to securing such conditions, and stressed that States

[131] Ibid., para 182.
[132] Ibid., para 186.
[133] Ibid., para 188.
[134] Ibid., para 210.
[135] Ibid., Concurring Opinion of Judge Sierra Porto, para 17.
[136] *Advisory Opinion OC-31/25* (n.99), para 169.
[137] Ibid., para 219.
[138] Ibid., para 269.

must facilitate the transition of women workers from the informal to the formal economy while simultaneously adopting positive measures to ensure the full enjoyment of trade union rights during that transition.[139]

Finally, the Court stressed the need for States Parties to adapt their domestic legislation to ensure the progressive transition from the informal to the formal economy, and to establish mechanisms enabling persons in atypical forms of work to participate in contributory social security schemes on the same terms as those in formal employment. This, it emphasised, is essential to realising the rights to care, equality and non-discrimination, and to preventing caregiving from becoming a barrier to accessing benefits guaranteeing an adequate standard of living in cases of disability or old age.[140]

E. Informality: An 'Aggravating' Factor

In its adjudication of human rights violations, the Court has consistently identified core features of informal labour as aggravating factors, notably the structural exclusion from formal employment and the denial of fundamental labour rights. These conditions create precarious and unsafe working environments incompatible with the ILO's normative standard of 'decent work'.[141] Informal workers typically lack essential legal and social protections, such as access to minimum wages, social security and safe workplaces. They are frequently subject to low pay, inadequate remuneration and exploitative practices, including excessive working hours without adequate rest. The dispersed and fragmented nature of informal labour further impedes the development of collective identities and hinders unionisation. Crucially, participation in informal work is often driven by the absence of viable alternatives, perpetuating entrenched economic and social disadvantage and reinforcing patterns of victimisation and discrimination.

As reflected in the evolution of its jurisprudence—and most recently in *Advisory Opinion OC-31/25*—the IACtHR has repeatedly addressed informality, recognising its pervasive impact on the enjoyment of human rights and its particular salience in sectors such as care and healthcare. Nevertheless, it has not taken the jurisprudential leap to recognise informal workers as a distinct vulnerable group entitled to specific and heightened legal protection. Instead, informality remains framed as a 'mere' aggravating factor in the

[139] Ibid., para 223.
[140] Ibid., para 258.
[141] C. A. Bedoya, 'Economía informal en América Latina y el papel del constitucionalismo transformador en la región' in A. von Bogdandy et al (eds), *La dimensión laboral del constitucionalismo transformador en América Latina* (Bogotá: Ediciones Uniandes, 2024), 62.

context of other violations, rather than as an autonomous source of rights infringements. This approach raises critical questions as to the adequacy of current legal frameworks and whether future jurisprudence might adopt a more systemic, rights-based recognition of informal labour as a structural human rights concern in Latin America and the Caribbean.

4. INFORMAL WORKERS: A 'VULNERABLE GROUP' IN LIGHT OF THE COURT'S JURISPRUDENCE

Informal workers remain largely unprotected by formal labour law systems. This legal invisibility and structural exclusion render them acutely susceptible to exploitation, precariousness and rights violations. In this context, the case law of the IACtHR provides a compelling normative framework for recognising informal workers as a 'vulnerable group' requiring increased protection. The Court has progressively interpreted the right to work as a human right grounded in human dignity and applicable to *all* workers, regardless of their contractual or legal status. This evolving jurisprudence supports the classification of informal workers as a vulnerable category within the meaning of Inter-American human rights law.

A. Right to Work, Dignity and Vulnerability

From its inception, the IASHR has framed the right to work as integral to the full development of the human personality. In this regard, in the early 2000s, the Court stated unequivocally that 'work should be a means of realization and an opportunity for the worker to develop his aptitudes, capacities and potential… to develop fully as a human being'. It further held that states must 'guarantee the effective protection of the human rights of all workers, regardless of their migratory status', including undocumented migrants.[142] The Court's recognition that dignity is inherent to the right to work supports a broader understanding of vulnerability that transcends legal formality or regularity of employment.

The Court has affirmed that States are under a continuing obligation to adopt effective measures to ensure that business enterprises respect human rights, including through robust due diligence mechanisms designed to safeguard the right to 'decent and dignified work'.[143] In this regard, the

[142] *Advisory Opinion OC-18/03* (n.17), para 158.
[143] *Miskito Divers* (n.122), para 49.

Inter-American judge has recognised the centrality of the concept of 'decent work'—as defined by the ILO—to the realisation of fundamental labour rights.[144] The ILO's Decent Work Agenda, which encompasses fair income, workplace security, social protection and respect for labour rights, provides a normative framework that has informed the Court's interpretation of State obligations in this sphere.

The Court's jurisprudence reflects an evolving and increasingly rights-based understanding of labour protection—one that regards the protection of labour rights not merely as instrumental, but as integral to the preservation of human dignity. This understanding is particularly salient in contexts marked by structural inequality and entrenched power imbalances, such as the employment relationship, where workers typically constitute the more vulnerable party.[145] In this respect, the Court has consistently held that labour law is inherently protective in nature. Its principal function is to establish binding legal minimum standards that serve to rebalance asymmetrical employment relationships and guarantee the effective enjoyment of workers' rights. This protective orientation is essential not only to mitigate economic vulnerability but to affirm the moral and legal status of the worker as a rights-bearing subject.[146]

This interpretation highlights the central role of labour in securing both personal and collective dignity. In *Yakye Axa Indigenous Community v Paraguay*, the Court held that the State's failure to guarantee essential socio-economic conditions, such as access to health care and adequate housing, constituted a breach of its obligations under Article 26 of the American Convention. The Court thereby drew a direct link between socio-economic deprivation and human vulnerability, reinforcing the indivisibility of civil, political and socio-economic rights.[147]

Turning to the world of work, the Court has acknowledged the particular vulnerabilities of workers in precarious employment and the reinforced protection required in such contexts.[148] In its landmark *Advisory Opinion OC-18/03*, the Court unequivocally affirmed that 'if undocumented migrants are employed, they immediately acquire the labour rights inherent to their

[144] *Advisory Opinion OC-27/21* (n.67), para 127.
[145] Ibid., para 124.
[146] Ibid., paras 144, 146.
[147] IACtHR, *Yakye Axa Indigenous Community v Paraguay*, Series C No 125 (17 June 2005), para 157.
[148] IACtHR, *Advisory Opinion OC-18/03* (n.17); *Case of Garibaldi v Brazil*, Series C No 203 (23 September 2009); *Hacienda Brasil Verde* (n.45); *Fireworks Factory v Brazil* (n.17); *Advisory Opinion OC-27/21* (n.67); *Miskito Divers* (n.122); *Case of Dos Santos Nascimento and Ferreira Gomes v Brazil*, Series C No 539 (7 October 2024).

status as workers and may not be discriminated against on the basis of their irregular migratory situation'.[149] The Court extended this reasoning in *Hacienda Brasil Verde Workers v Brazil*, where it addressed egregious forms of labour exploitation. The case involved individuals, primarily men aged between 15 and 40 years, from impoverished and marginalised regions, who were subjected to forced labour and servitude. The Court identified these workers as being in a situation of extreme vulnerability, shaped by interrelated factors such as systemic poverty, limited access to education and entrenched socio-economic exclusion. It concluded that such structural conditions rendered them particularly susceptible to exploitation and abuse, thereby imposing on the State a duty of reinforced diligence and protection.[150]

As discussed in Section 3, the Court's recent jurisprudence has placed increased emphasis on the situation of workers in conditions of extreme vulnerability, often resulting from intersecting and mutually reinforcing forms of discrimination. A notable example is the case concerning the explosion at a fireworks factory in the impoverished region of Santo Antônio de Jesus, where the victims were predominantly Afro-descendant women living in conditions of acute poverty. Similarly, in its very recent *Advisory Opinion OC-31/*25, the Court observed that Indigenous and Afro-descendant women are disproportionately represented among informal and domestic workers.[151] Their vulnerability is compounded by systemic barriers to accessing formal employment, which compel them into hazardous, unregulated and poorly remunerated work.[152] The Court has also acknowledged the heightened vulnerability of members of Indigenous communities who, as a result of entrenched socio-economic marginalisation, are driven to accept dangerous forms of employment that expose them to serious risks to their health and safety. In these contexts, the Court has consistently identified the dynamics of structural and intersectional discrimination, wherein poverty, ethnicity and social exclusion converge to exacerbate exposure to exploitation and harm.[153] Significantly, the Court has most recently affirmed that State Parties must adopt measures to promote the formalisation of workers, particularly those belonging to historically vulnerable communities.[154]

[149] *Advisory Opinion OC-18/03* (n.17), para 136.
[150] R. Martinón and I. Wences, 'Corte Interamericana de Derechos Humanos y pobreza: Nuevas incursiones a la luz del caso Hacienda Brasil Verde' (2020) 20 *Anuario Mexicano de Derecho Internacional* 169.
[151] *Advisory Opinion OC-31/25* (n.99), para 171.
[152] *Fireworks Factory v Brazil* (n.17).
[153] *Miskito Divers* (n.122), para 107.
[154] *Advisory Opinion OC-31/25* (n.99), para 248.

While these judgments represent important advances in the protection of specific categories of workers, they also raise unresolved questions regarding the broader scope of State obligations under the IASHR. In particular, the targeted application of Inter-American standards to narrowly defined groups of exceptionally vulnerable workers leaves open the question of how far States are required to go in extending comparable protections to larger, more diffuse categories of precarious labour, most notably, informal workers who fall outside the scope of conventional labour regulations.

B. Informal Workers: Addressing Their Vulnerability

The Court has developed a distinct concept of *vulnerable groups*, going beyond the protected categories enumerated in Article 1.1 of the American Convention, which prohibits discrimination on grounds, such as race, sex, language, or social origin. Vulnerable groups, as defined in the Court's jurisprudence, are collectives who have endured *structural discrimination, historical marginalisation*, or *systematic violations of rights*, and thus require *special protective measures* to ensure the effective enjoyment of human rights and substantive equality.[155] The Court has identified a broad range of such groups, including, for instance: Indigenous Peoples,[156] women,[157] children,[158] persons with disabilities,[159] LGBTQ+ Individuals,[160] migrants, refugees and asylum seekers,[161] Afro-Descendant communities,[162] Human Rights defenders,[163] and persons deprived of liberty.[164] However, this list is not exhaustive and continues to evolve in light of emerging vulnerabilities

[155] For further analysis, see: M. Beloff and L. Clérico, 'Derecho a condiciones de existencia digna y situación de vulnerabilidad en la jurisprudencia de la Corte Interamericana' (2016) 14 *Estudios Constitucionales: Revista del Centro de Estudios Constitucionales* 139–78; S. García Ramírez, 'Los sujetos vulnerables en la jurisprudencia "transformadora" de la Corte Interamericana de Derechos Humanos' (2019) 41 *Revista Mexicana de Derecho Constitucional* 3–34; V. Solá, 'La vulnerabilidad a través de la doctrina del control de convencionalidad: ¿un bien jurídico de tutela diferenciada?' (2023) XXI Anuario del Centro de Investigaciones Jurídicas y Sociales 183.
[156] *Yakye Axa* (n.147).
[157] IACtHR, *González et al. ('Cotton Field') v Mexico*, Series C No 205 (16 November 2009).
[158] IACtHR, *Case of the 'Street Children' (Villagrán Morales et al) v Guatemala*, Series C No 63 (19 November 1999).
[159] IACtHR, *Ximenes Lopes v Brazil*, Series C No 149 (4 July 2006).
[160] IACtHR, *Advisory Opinion OC-24/17, Gender Identity, Equality, and Non-Discrimination of Same-Sex Couples*, Series A No 24 (24 November 2017).
[161] IACtHR, *Pacheco Tineo Family v Bolivia*, Series C No 272 (25 November 2013).
[162] IACtHR, *Saramaka People v Suriname*, Series C No 172 (28 November 2007).
[163] IACtHR, *Human Rights Defender v Guatemala*, Series C No 283 (28 August 2014).
[164] IACtHR, *Mendoza Prisons v Argentina*, Series C No 260 (14 May 2013).

This jurisprudential recognition has profound implications for States' obligations. In the *Hacienda Brasil Verde Workers v Brazil*, the Court declared:

> [i]t is not sufficient that States merely abstain from violating rights; rather, it is essential that they adopt positive measures, determined on the basis of the particular needs for protection of the subject of law due to his personal situation or to the specific situation in which he finds himself, such as extreme poverty or marginalisation.[165]

Accordingly, States are bound by reinforced obligations, which include *preventive duties* to protect vulnerable individuals from foreseeable harm; *positive obligations* to adopt special measures (e.g. legislative, administrative and policy interventions); and *structural remedies*, including institutional reforms, capacity-building of labour inspectors and judiciary and recognition of historical injustice. The Court has also embraced an *intersectional approach*, recognising that many workers, particularly women, Afro-descendants, Indigenous communities, or migrants, face multiple and overlapping forms of discrimination. These compounded vulnerabilities require tailored, context-specific protections and place States under a more exacting duty of diligence.[166]

Informal workers operate outside the scope of formal labour regulation, often without written contracts, statutory entitlements, or effective legal protections. Their informality is rarely voluntary; rather, it is a product of structural socio-economic exclusion, particularly in economies characterised by widespread unemployment, underemployment and limited access to decent work. This lack of choice renders informal workers structurally vulnerable, exposing them to a wide range of labour rights violations.[167]

The IACtHR has increasingly recognised informality as a key driver of vulnerability, reinforcing the precariousness of informal workers.[168] In *Hacienda Brasil Verde Workers v Brazil*, for instance, the Court emphasised the links between poverty and susceptibility to forced labour, particularly in rural

[165] *Hacienda Brasil Verde* (n.45), para 337.
[166] *Hacienda Brasil Verde* (n.45); *Fireworks Factory v Brazil* (n.17); *Miskito Divers* (n.122); *Dos Santos Nascimento* (n.148).
[167] *Miskito Divers* (n.122), para 104.
[168] *Fireworks Factory v Brazil* (n.17), para 201. It is worth noting that the Inter-American Commission on Human Rights recognised informal workers as a vulnerable group in its Resolution 1/2020. 'Pandemic and Human Rights in the Americas'. While the Commission's resolutions are not legally binding, they nevertheless carry significant persuasive authority and may serve as interpretative guidance for the Court in shaping its jurisprudence.

and marginalised communities.[169] Three key dimensions define the precariousness of informal work: firstly, informal workers typically endure working conditions marked by the absence of job security, enforceable employment contracts, or statutory guarantees such as a minimum wage.[170] This lack of formal recognition denies them the legal protection ordinarily afforded under labour law.[171] Secondly, informality exacerbates the risk of exploitation. Workers in the informal economy are disproportionately exposed to abusive labour practices, such as wage theft, unsafe or degrading working environments, and even forced labour, while simultaneously lacking effective access to judicial or administrative remedies. Thirdly, informal workers are frequently excluded from social protection systems, leaving them without access to healthcare, contributory pensions, unemployment benefits, or other forms of social security.[172] Furthermore, informality severely undermines *collective labour rights*.[173] Informal workers 'frequently do their jobs in discrete workplaces, making it difficult for them to come together to build a collective identity and coordinate campaigns'.[174] The IACtHR has acknowledged that such fragmentation impairs the exercise of freedom of association and limits the ability of informal workers to assert their rights effectively.

These intersecting vulnerabilities—legal, economic and institutional—highlight why informal workers should be treated as a structurally disadvantaged group within the framework of international human rights law. As the IACtHR has indicated, vulnerability arises not solely from individual characteristics, but from systemic barriers to the enjoyment of rights on an equal footing. As mentioned by Judge Pazmiño Freire, as social inequality, high levels of immigration, unemployment and informality converge in the region, the international human rights system must rise to this challenge.[175] In this respect, as the precariousness endured by informal workers fits the criteria for being classified as part of a 'vulnerable group' under the IACtHR's evolving jurisprudence, it is necessary to recognise their

[169] The Court only tangentially referred to 'informality' (para 195). *Hacienda Brasil Verde* (n.45), paras 334–42.
[170] *Fireworks Factory v Brazil* (n.17), para 167.
[171] UN. Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, paras 11, 24, and 40.
[172] *Miskito Divers* (n.122), para 96; Preamble of the ILO Recommendation No 204.
[173] L. Alfers and R. Moussié, 'Towards a More Inclusive Social Protection: Informal Workers and the Struggle for a New Social Contract' in L. Alfers, M. Chen and S. Plagerson (eds), *Social Contracts and Informal Workers in the Global South* (Cheltenham: Edward Elgar, 2022), 107–10.
[174] *Advisory Opinion OC-27/21* (n.67), paras 182, 186.
[175] *Miskito Divers* (n.122), Concurring Opinion of Judge Pazmiño Freire, para 8.

structural vulnerability and protect them accordingly. This interpretation aligns with the transformative constitutional orientation of the ICCAL, which not only demands recognition of the systemic and often normalised violations of informal workers' rights but also mandates the construction of new normative frameworks capable of redressing their entrenched precarity.[176]

In the Court's case law, prevention is central to the protection of vulnerable groups, as States are required not only to refrain from violating rights but to adopt proactive measures that address the structural conditions, such as poverty, discrimination and exclusion, that place certain populations at greater risk. The Court has repeatedly affirmed that this duty of prevention includes strengthening regulatory institutions, such as labour inspectorates, and monitoring private actors. In *Workers of the Fireworks Factory v Brazil*, the Court found that Brazil had breached its duty to protect the rights of Afro-descendant women working in informal and dangerous conditions, noting that given their situation of particular vulnerability, 'the State had an enhanced obligation to oversee the operating conditions of the factory and to ensure that real measures were taken to protect the life and health of the workers and to guarantee their right to material equality'.'[177] Significantly, the Court also held that the State's failure to act exacerbated the workers' structural discrimination and constituted a breach of their right to just and favourable conditions of work under Article 26 of the American Convention. Central to this failure was the dysfunction of labour inspection mechanisms, which the Court found were inadequate and failed to address repeated complaints.[178] A similar approach was adopted in *Miskito Divers v Honduras*, where the Court held that the State had violated the rights of Indigenous workers engaged in high-risk fishing activities. Despite being aware of exploitative and dangerous working conditions imposed by private enterprises, the State failed to adopt preventive or corrective measures. The Court reaffirmed that States cannot absolve themselves of responsibility where private actors operate in known contexts of vulnerability and abuse.[179] These cases establish that the effectiveness of labour inspection systems is integral to the fulfilment of positive State obligations under the American Convention. As such, regulatory enforcement, especially in informal sectors and remote areas, must be strengthened as part of broader institutional reform aimed at protecting fundamental labour rights effectively.

[176] Alvarado Bedoya (n.141), 60.
[177] *Fireworks Factory v Brazil* (n.17), para 201.
[178] Ibid., para 137.
[179] *Miskito Divers* (n.122), para 104.

As outlined above, States bear positive obligations to protect members of vulnerable groups. At the individual level, this includes the duty to provide adequate reparation, particularly for informal workers, whose rights must be effectively vindicated through domestic legal mechanisms. States must also impose meaningful sanctions on employers who engage in exploitative labour practices. In such contexts, judicial authorities are expected to exercise heightened diligence in investigating and adjudicating violations.[180] The Court has increasingly recognised that reparations for violations affecting vulnerable groups must extend beyond individual redress to include structural measures aimed at addressing systemic injustices. These often encompass legislative reform, the adoption of inclusive public policies, and robust guarantees of non-repetition. In *Street Children (Villagrán Morales et al) v Guatemala*, the Court mandated the implementation of programmes to protect children from violence and exploitation.[181] Likewise, in *González et al ('Cotton Field') v Mexico*, the Court required Mexico to tackle systemic gender-based violence through institutional reforms and policy changes to ensure the protection of women.[182] In *Pacheco Tineo Family v Bolivia*, the Court found that migrants and asylum seekers constitute a vulnerable group entitled to special protections, compelling Bolivia to reform its asylum procedures to ensure compliance with international standards.[183]

Workers of the Fireworks Factory v Brazil marked a key development in the realm of labour rights. The Court ordered Brazil to adopt structural reforms, including policies to prevent recurrence and dismantle conditions enabling exploitative labour. Measures included promoting alternative livelihoods, especially for impoverished Black women and youth over 16. The Court stressed the State's duty to address root causes such as racialised poverty and exclusion from formal labour.[184] On informal work, the Court has underscored the need for inclusive protections beyond formal employment. In *Advisory Opinion OC-27/21*, it affirmed States' duties to support women's transition to formal economies while protecting freedom of association.[185] Reparations were framed as transformative, targeting the socio-economic structures sustaining informality and inequality.

Taken together, these developments affirm that the right to work under the case law of the Court is firmly grounded in the principles of dignity, equality and

[180] *Spoltore v Argentina* (n.65), para 45.
[181] *'Street Children' v Guatemala* (n.158).
[182] *('Cotton Field') v Mexico* (n.157).
[183] *Pacheco Tineo Family* (n.161).
[184] *Fireworks Factory v Brazil* (n.17), paras 282–91.
[185] *Advisory Opinion OC-27/21* (n.67), para 182.

inclusion. By acknowledging the precarious realities faced by informal workers and the structural barriers that perpetuate their marginalisation, the Court's jurisprudence offers a robust normative basis for recognising informal workers as a vulnerable group deserving reinforced protection. As demonstrated throughout this analysis, although informal workers often fall outside the scope of formal labour regulation, they remain firmly within the protective ambit of international human rights law. Accordingly, their explicit recognition as a vulnerable group is not only doctrinally sound but normatively imperative.

5. THE BROADER IMPACT OF RECOGNISING INFORMAL WORKERS AS A VULNERABLE GROUP

A litigation-centric approach within human rights strategy presents challenges for enforcing informal workers' rights. Judicial adjudication, though vital, can be protracted, costly and intimidating for workers operating outside formal regulatory systems. Many informal workers lack the resources or knowledge to navigate legal processes, even when their rights are theoretically protected.[186] Moreover, litigation may not address the systemic economic and social inequalities that perpetuate informal workers' marginalisation. However, judicial mechanisms remain amongst the few viable avenues through which informal workers can effectively assert their rights. In the absence of collective bargaining power and political representation within the informal economy, courts frequently constitute a critical forum for redress.

The IACtHR has played a seminal role in advancing regional labour rights standards, exerting influence on domestic legal systems through its jurisprudence.[187] Within this framework, it is essential to highlight the IACtHR's emphasis on the necessity of an effective labour justice system—one characterised by specialised labour courts, accessible procedural mechanisms and the consistent application of pro-worker principles such as *in dubio pro operario* and the principle of favourability. Of particular importance is the Court's recognition of free access to justice as a fundamental prerequisite for vulnerable workers, who might otherwise be excluded from legal protections altogether.[188]

[186] S. Routh, 'Do Human Rights Work for Informal Workers' in D. Ashiagbor (ed), *Re-imagining Labour Law for Development: Informal Work in the Global North and South* (Oxford: Hart Publishing, 2019), 101, 111.
[187] See s 2.
[188] *Advisory Opinion OC-27/21* (n.67), para 116.

In this regard, the doctrine of *conventionality control* warrants special attention. This doctrine mandates that domestic laws conform to the American Convention, thereby compelling national judges to act as 'Inter-American judges' and ensure that domestic legislation aligns with regional human rights standards.[189] Moreover, the doctrine of conventionality control extends beyond the judiciary, imposing obligations on legislative and executive branches to uphold Inter-American norms.[190] The IACtHR's recognition of informal workers as a vulnerable group thus carries implications far beyond its immediate jurisprudential effects: it holds the transformative potential to recalibrate domestic legal frameworks and invigorate labour rights movements throughout the Americas.

By formally classifying informal workers as a group deserving strengthened protection, the Court would legitimise their struggles within international human rights law and confer normative authority on their claims, thereby exerting pressure on national legislatures and judiciaries to adopt protective frameworks. When informal workers engage in litigation, they not only seek individual remedies but also expose systemic failures in labour protections. As Unni notes, such litigation clarifies the state's role as the primary duty-bearer in protecting workers' rights, reframing labour disputes within a human rights framework.[191] This shift is critical because it moves labour rights discourse from private contractual disputes to public accountability, reinforcing the state's obligation to regulate labour relations effectively. While critics rightly point out the delays in the Court's rulings—often rendering justice untimely for affected workers[192]—the symbolic weight of its decisions can still mobilise advocacy efforts, ensuring that labour rights remain a priority in political and legal discourse.[193]

[189] D. Guarnizo-Peralta, '¿Cortes pasivas, cortes activas, o cortes dialógicas?: Comentarios en torno al caso Cuscul Pivaral y otros v. Guatemala' in M. M. Antoniazzi, L. Ronconi and L. Clérico (eds), *Interamericanización de los DESCA. El caso Cuscul Pivaral de la Corte IDH* (México: Instituto de Estudios Constitucionales del Estado de Querétaro and MPIL, 2020), 429.

[190] IACtHR, *Gelman v Uruguay*, Series C No 221 (24 February 2011), para 239.

[191] J. Unni, 'Globalization and Securing Rights for Women Informal Workers in Asia' (2004) 5 *Journal of Human Development* 335.

[192] For a detailed list of the most important academic pieces on this issue, see: von Bogdandy et al (n.75), 4, particularly n.16.

[193] C. A. Rodríguez-Garavito, 'Beyond Enforcement: Assessing and Enhancing Judicial Impact' in M. Langford, C. Rodríguez-Garavito and J. Rossi (eds), *Social Rights Judgments and the Politics of Compliance: Making It Stick* (Cambridge: CUP, 2017), 75–108; M. O. Ocaña and A. Pérez-Liñán, 'Transformative Impact: A Framework for Analysis' in A. von Bogdandy et al (eds), *The Impact of the Inter- American Human Rights System: Transformations on the Ground* (Oxford: OUP, 2024), 182.

A striking example of the perceived disruptive power of judicial remedies in the labour sphere is Argentina's 2024 labour reform under the Milei administration, which aggressively pursued deregulation as part of its broader economic overhaul. Central to these reforms was the repeal of several key provisions of the National Employment Act (1991), notably Articles 8 to 10, which for over three decades had guaranteed statutory compensation for workers who were unregistered or only partially registered. These provisions had served as one of the most effective tools available to informal workers to enforce their rights and hold employers accountable. The decision to dismantle one of the most robust legal protections for informal labour highlights how access to judicial remedies is perceived as a threat by deregulatory governments. That a libertarian administration placed such a high priority on eliminating this protection demonstrates the potential of litigation, particularly when grounded in rights-based frameworks, to challenge and disrupt exploitative labour practices, even when applied indirectly.[194]

The potential recognition of informal workers as a vulnerable group in the jurisprudence of the IACtHR may also hold significance beyond legal doctrine; it has the potential to strengthen the representative bodies of informal workers in their struggle for rights. By formally acknowledging their vulnerability, the Court's rulings could empower civil society organisations, trade unions and informal workers' collectives to invoke human rights arguments in domestic advocacy. This legal recognition reframes labour exploitation not merely as an economic issue but as a human rights violation, influencing judicial reasoning and policy debates. Consequently, informal workers' organisations may gain greater legitimacy in demanding protections such as social security coverage, legal safeguards against wage theft and improved working conditions.

However, some scholars remain sceptical of a human rights-based approach to labour rights. Kolben, for instance, argues that human rights frameworks tend to emphasise individual entitlements, potentially undermining the collective nature of labour protections.[195] Labour rights derive their strength from solidarity and collective bargaining, whereas human rights discourse

[194] M. Ackerman, *La reforma laboral en la Ley 27742 y su reglamentación* (Santa Fe: Rubinzal-Culzoni, 2024), 183–97; M. C. Altamira, 'Análisis de las modificaciones introducidas por la Ley de Bases y Puntos de Partida para la Libertad de los Argentinos 27.742 a la Ley Nacional de Empleo 24.013 y derogación del régimen sancionatorio por defectuosa registración del contrato de trabajo' (2024) *Dossier 10 Revista de Derecho Laboral Actualidad* 155–61.

[195] K. Kolben 'Labour Rights as Human Rights?' (2010) 50 *Virginia Journal of International Law* 449.

risks reducing workplace struggles to individual claims.[196] This critique raises valid concerns about whether human rights litigation could dilute the power of trade unions by shifting focus away from collective action. Yet, this need not be an either-or proposition. As Compa asserts, the debate should not centre on choosing between human rights and labour rights but on integrating them strategically.[197] This is particularly crucial for informal workers, who often lack meaningful representation within traditional labour structures.[198] As Alfers and Moussié note, informal workers are frequently excluded from tripartite negotiations between governments, employers and formal trade unions.[199] Many unions, historically structured around formal employment relationships, are ill-equipped to address the specific needs of informal workers, leaving them without effective advocacy channels. Human rights discourse—whether deployed by informal workers themselves or by civil society organisations—can serve as a vital tool to secure legal recognition and protections that traditional labour movements have failed to deliver.[200]

In this context, where informal employment comprises nearly half of the Latin American and Caribbean labour force, the emergence of worker collectives beyond the traditional trade union framework ought not to be regarded as anomalous, but rather as a structurally responsive phenomenon. Given the persistent marginalisation and legal exclusion of informal workers, it is both necessary and normatively justified to extend legal recognition and protection to such organisations, irrespective of their formal legal status.[201] Notably, platform workers' associations in Brazil and Argentina have gained prominence; a series of demonstrations led by collectives of platform delivery workers in Brazil has highlighted the urgent need to address labour protections within the digital platform economy. This movement has largely developed outside conventional trade union frameworks.[202] Moreover, a significant

[196] J. Youngdahl, 'Solidarity First: Labor Rights are Not the Same as Human Rights' (2009) 18 *New Labor Forum* 31–7.
[197] L. Compa, 'Solidarity and Human Rights: A Response to Youngdahl' (2009)18 *New Labor Forum* 38, 39.
[198] Kalil (n.5).
[199] L. Alfers and R. Moussié, 'The ILO World Social Protection Report 2017–19: An Assessment' (2019) 51 *Development and Change* 683–97; S. Plagerson, L. Alfers and M. Chen, 'Introduction: Social Contracts and Informal Workers in the Global South' in L. Alfers, M. Chen and S. Plagerson (eds), *Social Contracts and Informal Workers in the Global South* (Cheltenham: Edward Elgar, 2022), 7.
[200] See Lobato in this special issue.
[201] Alvarado Bedoya (n.141), 72–3.
[202] R. Kalil, 'Organização coletiva dos trabalhadores via plataformas digitais' (2020) (39) *Revista Contracampo* 79–93.

proportion of informal workers in Argentina are organised and have been represented by *organizaciones sociales*, which have functioned, in effect, as their representatives.[203] Rather than undermining collective action, the extension of statutory rights to informal workers and their representative bodies would reinforce it, providing a stronger legal basis for grassroots mobilisation and worker-led advocacy. This becomes particularly salient in contexts where regressive labour law reforms have sought to deregulate employment protections through the instrumentalisation of collective agreements, such as Brazil's 2017 reform under the Temer administration,[204] and the more recent 2024 reform under the Milei administration in Argentina.[205] In such environments, a human rights-based approach does not weaken collective action; it reinforces it by framing labour protections as inalienable rights rather than negotiable concessions.

The supposed dichotomy between human rights' individualism and labour rights' collectivism is increasingly untenable. As Bogg et al. argue, the contrast between rights-based legalism and political collectivism is overstated: organised labour movements require a legal framework of rights to thrive and exert influence.[206] This integrative understanding is reflected in the jurisprudence of the Court, particularly in *Advisory Opinion OC-27/21* and its subsequent case law.[207] The Court explicitly affirms the human rights character of the freedoms of association and collective bargaining, as well as the right to strike, highlighting their indispensable role in protecting the dignity and autonomy of all workers, including those operating within the informal economy. Thus, human rights should not be viewed as antithetical to labour movements but as a complementary framework that legitimises and strengthens collective action. For informal workers, who have historically been excluded from formal labour protections, human rights recognition offers a pathway to assert their rights, both individually and collectively. By acknowledging their vulnerability, the Court would not only remedy immediate injustices but also empower the organisations advocating for their rights, transforming the status of informal workers from invisible to indispensable in the ongoing fight for labour justice.

[203] See Lobato in this special issue.
[204] R. Kalil, 'De San José para Brasília: os parâmetros interamericanos de direitos humanos e a negociação coletiva' (2025) 5 *Revista Jurídica del Trabajo* 35–76.
[205] See: G. S. Novoa. '¿Qué pretende usted de mí? Las propuestas de la ley 27.742 a la negociación colectiva' (2025) 8 *Revista de Estudios de Derecho Social* 16–23.
[206] A. Bogg et al, *Human Rights at Work. Reimagining Employment Law* (Oxford: Hart Publishing, 2024), 324.
[207] *Advisory Opinion OC-27/21* (n.67); *Former Employees v Guatemala* (n.74); *SUTECASA v Peru* (n.68).

6. CONCLUSION

This article has examined the complex interplay between informal work, vulnerability and human rights within the framework of the IASHR, paying particular attention to the jurisprudence of the IACtHR. As demonstrated throughout this analysis, informal work is a deeply entrenched structural feature of labour markets in Latin America and the Caribbean, characterised by precarious conditions, a lack of social protection and systemic exclusion from formal legal frameworks. While initially receiving limited direct attention, the Court's evolving jurisprudence, particularly since the *Lagos del Campo* judgment, reflects a transformative approach that seeks not only to remedy individual violations but also to address systemic deficiencies and provide enhanced protection for vulnerable groups. Cases such as *Workers of the Fireworks Factory of Santo Antônio de Jesus v Brazil* and *Miskito Divers v Honduras* illustrate how the Court has considered precarious and informal conditions as intensifying the severity of human rights abuses, especially when compounded by intersecting vulnerabilities like poverty, ethnicity, or age.

Nonetheless, while the Court has previously acknowledged informality, it has predominantly framed it as an aggravating factor in the context of other rights violations, rather than recognising it as a systemic violation or designating informal workers as a distinct vulnerable group. However, in the authors' view, a compelling normative basis exists within the Court's jurisprudence for explicitly recognising informal workers as a vulnerable group. The IACtHR defines vulnerable groups as collectives who have faced structural discrimination, historical marginalisation, or systematic rights violations, necessitating special protective measures. Informal workers undeniably fit this definition; their legal invisibility and structural exclusion are rarely a matter of choice but stem from systemic socio-economic barriers, rendering them acutely susceptible to exploitation and rights abuses on an unequal footing with formal workers.

The Court has consistently held that labour law is inherently protective, designed to rebalance asymmetrical power dynamics inherent in the employment relationship and affirm the dignity of the worker. The explicit recognition of informal workers as a vulnerable group under the Court's jurisprudence would have a profound and significant impact on the protection of their rights across Latin America. Such a classification would trigger reinforced state obligations. States would be bound by heightened preventive duties to address the structural conditions that perpetuate informality and expose these

workers to harm. This includes a positive obligation to adopt special legislative, administrative and policy measures tailored to the specific needs and realities of diverse informal workers. Furthermore, it would necessitate structural remedies, such as strengthening labour inspection mechanisms, ensuring effective access to justice for informal workers and implementing inclusive public policies aimed at reducing informality and safeguarding core labour rights in practice.

Moreover, the classification of informal workers as a vulnerable group would have significant implications for domestic jurisprudence and national political discourse. It would reframe the challenges faced by informal workers as matters of human rights, rather than merely issues of labour regulation or economic policy. Such recognition could also serve to strengthen the position of their representatives, such as trade unions, civil society organisations and other advocacy bodies, by conferring legal recognition on their role and legitimising their capacity to articulate and defend the interests of informal workers.

In conclusion, while the IACtHR has taken important steps in protecting labour rights, the formal recognition of informal workers as a distinct vulnerable group is a necessary and logical progression based on the Court's principles and jurisprudence regarding vulnerability and labour rights. This designation would concretise states' enhanced obligations towards a large and systematically marginalised population, offering a more robust normative foundation for advocating for and securing the effective protection of informal workers' rights in Latin America and the Caribbean.