

# Annual OPIC trends 2021

With the end of 2021, Child Rights Connect has put together a summary of last year's trends under the OPIC.

**\*Please note that Child Rights Connect has based its analysis on the information publicly accessible on the UN Committee of the Rights of the Child's website.\***

<b>Highlights of the year</b>
<b>2 new ratifications:</b> <a href="#">Armenia</a> <a href="#">Seychelles</a>
<b>New or revised official documents:</b> <ul style="list-style-type: none"> <li>• <a href="#">Individual complaints form &amp; guidance note for submitting individual communications under OPIC</a></li> <li>• <a href="#">Working methods to deal with individual communications received under the OPIC</a></li> <li>• <a href="#">Rules of Procedure under the OPIC</a></li> <li>• <a href="#">Follow-up progress report on individual communications</a></li> <li>• <a href="#">Guidelines for oral hearings</a></li> </ul>
<b>First oral hearings in the history of UN Committee of the Rights of the Child</b>
<b>22 individual communications adopted:</b> <ul style="list-style-type: none"> <li>• 7 decisions on the merits</li> <li>• 6 decisions found inadmissible</li> <li>• 9 decisions discontinued</li> </ul> <p>Concerning: Spain (10); Switzerland (3); Germany (3); Argentina (1); Brazil (1); Denmark (1); Finland (1); France (1); and Turkey (1).</p>

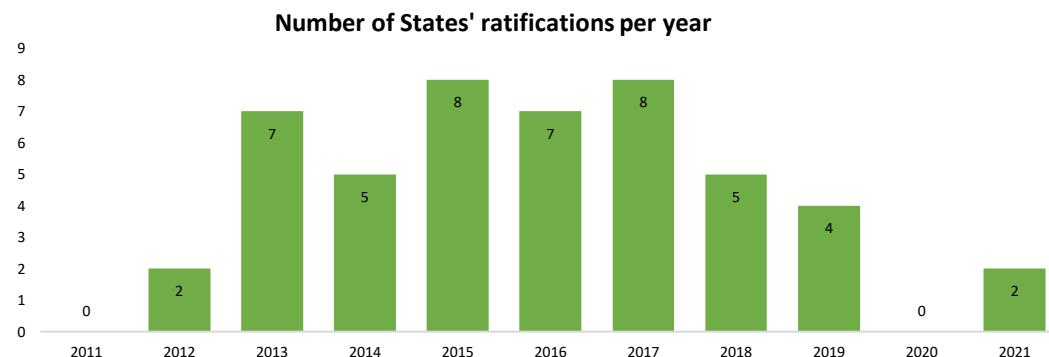
*In this document you will find:*

<i>Annual OPIC trends 2021 .....</i>	<i>1</i>
1. Key developments of the year.....	2
2. The Committee's sessions and individual communications under OPIC .....	3
3. CRC sessions and inquiry procedures under OPIC.....	5
4. OPIC recommendations in the Committee's COBs (see annex below) .....	5
5. Work in progress.....	5
ANNEX .....	6

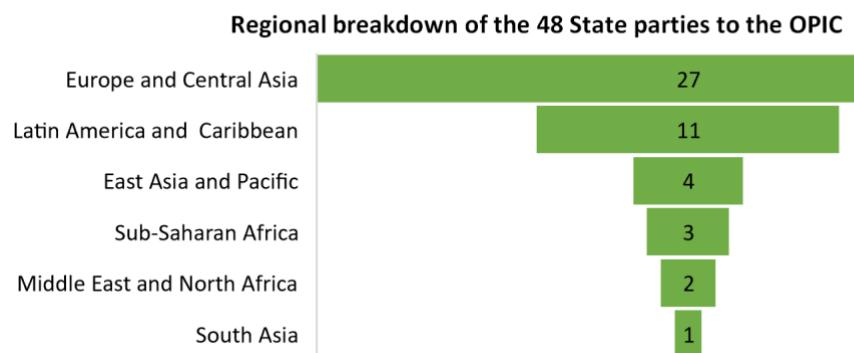
## 1. Key developments of the year

### a. OPIC ratification status

In 2021, two States ratified the instrument: [Armenia](#) and [Seychelles](#). The total number of States parties to the OPIC is currently 48.



As in previous years, Europe continues to be the region with most States parties to the OPIC (27 States), followed by Latin America (11 States).



For more information on OPIC ratification status, you can visit our OPIC dedicated website [here](#).

### b. Procedural developments

- **First oral hearings in the Committee's history:**<sup>1</sup> Between May and September, the UN Committee on the Rights of the Child ("the Committee") held its first historical hearings concerning the impact of climate change on 16 children (climate change case), where petitioners, States and third-party intervenors participated.
- **First-ever child-friendly decisions:** together with its long-awaited [decisions](#) on the climate change case,<sup>2</sup> the Committee published an [open letter](#) to the child and young complainants, which contained a [child-friendly version of the decisions](#).

<sup>1</sup> Third time oral hearings were held in Treaty Bodies' history, following the oral hearings of the Human Rights Committee and the Committee Against Torture.

<sup>2</sup> *Sacchi et al v. Argentina et al* ([CRC/C/88/D/104/2019](#); [CRC/C/88/D/105/2019](#); [CRC/C/88/D/106/2019](#); [CRC/C/88/D/107/2019](#); [CRC/C/88/D/108/2019](#)).

- **Grouping of individual communications under the same procedure:** In 2021, the Committee started to group individual communications of similar cases under the same procedure more consistently. This helps advance the clearing its backlog as the number of decisions that it is required to produce and publish is reduced. This procedural strategy was applied in cases concerning age assessment procedures in respect of unaccompanied minors.<sup>3</sup>
- **Relaunch of the informal exchanges between the Committee and States on the OPIC:** On June 9, the Committee and OHCHR, with the support of Child Rights Connect and the sponsorship of Germany and Slovenia as co-chairs of the Group of Friends on the Rights of the Child, organised the second annual dialogue between the Committee and States on the OPIC. In 2021, this exchange was established as an annual recurring event. For more information on the event, you can read [Child Rights Connect's news piece](#)

### c. New or revised official documents

Official documents adopted and published by the Committee this year:

- New [complaints form](#) and accompanying [guidance note](#) published by OHCHR which aims to simplify the submission process for petitioners, and is common to all UN Treaty Bodies.
- The Committee revised:
  - its [Working methods to deal with individual communications received under the OPIC](#).
  - its [Rules of Procedure under the OPIC](#) to modify Rule 19 on oral hearings.
- The Committee adopted [Guidelines for oral hearings in the context of the Committee's consideration of communications under the OPIC](#).
- The Committee also adopted its [Follow-up progress report on individual communications](#) for 2021 helping track the implementation the Committee's adopted Views by States.

## 2. The Committee's sessions and individual communications under OPIC

### a. Number and type of decisions

During 2021, the Committee held three sessions ([86th session](#) (18 January – 5 February 2021), [87th online session](#) (17 May – 4 June 2021), and [88th session](#) (6 September – 24 September 2021)), during which, it adopted and published a total of **22 individual communications**. Among these:

- 7 decisions were on the merits.
- 6 decisions were found inadmissible.
- 9 decisions were discontinued.

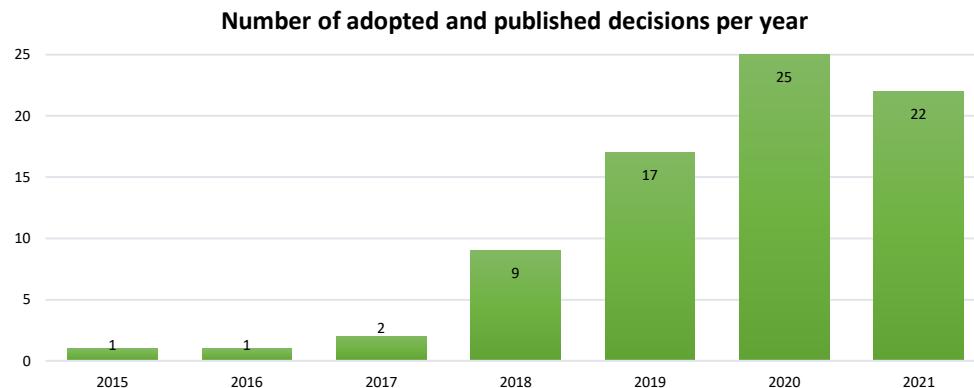
The decisions were against Spain (10); Switzerland (3); Germany (3); Argentina (1); Brazil (1); Denmark (1); Finland (1); France (1); and Turkey (1). For more details, you can visit [Child Rights Connect's CRC trends jurisprudence database](#).

Despite the COVID-19 pandemic, in 2020 and 2021, the Committee adopted and published the highest number of individual communications' decisions ever. One explanatory factor could be the postponement and scaling-down of scheduled State reviews as part of the reporting procedure, which possibly liberated time to advance on individual communications.<sup>4</sup>

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<sup>3</sup> Although this approach was first seen by the Committee in 2020, it became most evident in 2021, when the Committee grouped together and ultimately discontinued, three cases within one decision during its [86th session](#) (Communications No [57/2018, 58/2018 and 59/2018](#)), and nine cases within three decisions during its [87th online session](#) (Communications [70/2019, 71/2019 and 72/2019; 62/2018, 64/2018 and 65/2018](#); and [66/2018, 67/2018 & 68/2018](#)).

<sup>4</sup> No State party was reviewed at the [86th session](#); only two State parties (Luxembourg and Tunisia) were reviewed at the [87th online session](#); and four State parties (Czech Republic, Eswatini, Poland and Switzerland) were reviewed at the [88th session](#).

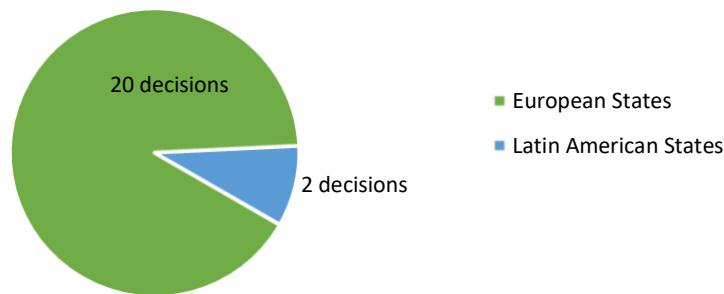


Compared to the 25 individual communications adopted and published in 2020 by the Committee, in 2021, there has been a slight decrease in the total number of adopted and published decisions (22 in total). This could possibly be due to: (i) the consolidation of the procedural strategy consisting of reviewing different communications under the same procedure; and (ii) the fact that the Committee has concentrated its work on different developments (such as the “climate change case”<sup>5</sup> and the revision as well as adoption of new official documents).

#### b. Number of decisions adopted per region

Out of the 22 individual communications adopted in 2021, 20 (91%) were against European States, and Spain in particular (10 decisions, 45%). Two adopted decisions were against Latin American States. This follows the trends of previous years.

**Number of adopted and published decisions per region**



#### c. Jurisprudential trends

In 2021, the Committee’s adopted decisions have continued to concern mainly **the theme of migration**, including cases related to age assessment procedures of unaccompanied minors and deportation orders.

Nevertheless, **new themes are emerging**:

- **Gender perspective in age assessment cases:** This year for the first time, the Committee looked at the specific situation of an **unaccompanied migrant girl**, whose genitalia were examined by State authorities for the purposes of determining age.<sup>6</sup> With this case, the

<sup>5</sup> In its [open letter](#), the Committee explained that it dedicated many hours to discussing this case.

<sup>6</sup> Please see, *R.Y.S. v. Spain* ([CRC/C/86/D/76/2019](#)) para. 9 (d), (e). Following this decision, Spain adopted a [pioneering law to protect children from violence](#) with a specific provision prohibiting physical examinations involving nudity, genital examination and other age assessment methods infringing children’s dignity, privacy and bodily integrity.

Committee integrated a gender perspective and further developed the remedies of the previous age determination cases.<sup>7</sup>

- **Child's consent:** the Committee found inadmissible a case presented by the father of a child without the express consent of the child, as it was no longer considered to be in the best interest of the child.<sup>8</sup>
- **Climate change:** The Committee adopted in 2021 its [decisions](#) in the climate change cases. The communications were found inadmissible for failure to exhaust domestic remedies but they are still a **historic ruling setting groundbreaking precedent**. Child Rights Connect analyses in detail the key elements of the Committee's decisions in its [news piece](#).

#### d. Pending cases

[The Committee's table of pending cases](#) was last updated on March 15, 2021. According to this table—and excluding the cases that have been reviewed by the Committee after this date—there are 55 cases pending for the Committee's revision. Among these cases, most are:

- against Spain (12), Switzerland (11) and France (8).
- relate to the issues deportation (22), age assessment of unaccompanied migrant (8), and right to education (6).

For the full list of countries and issues regarding the cases pending for the Committee's review, visit our OPIC dedicated website [here](#)

### 3. CRC sessions and inquiry procedures under OPIC

According to the information shared at the 76th session of the General Assembly on October 7, 2021, "the Committee is working on four inquiries".<sup>9</sup> Until now, the only concluded inquiry concerns [Chile](#), for which the Committee published its recommendations and findings in June 2018.<sup>10</sup>

### 4. OPIC recommendations in the Committee's COBs (see annex below)

In 2021, the Committee's recommendations on OPIC in the Concluding Observations (COBs) of States reviews have varied depending on States' OPIC ratification status:

- For the States that are only signatory or had taken no action to ratify the instrument, the Committee recommended the **ratification of the OPIC**.
- For the State parties to the OPIC, the Committee highlighted the importance of **raising awareness** about the instrument.

### 5. Work in progress

The Working methods for inquiries are currently being drafted by the newly constituted Sub-group on Inquiries, and they are expected to be published on [the Committee's website](#).

<sup>7</sup> Since 2020 it is possible to see an evolution in the remedies of individual communications. Indeed, there has been a shift from generic remedies to more specific and tailored individual and systemic remedies. See for example: *A.E.A. v. Spain* ([CRC/C/87/D/115/2020](#)) paras. 12 (7) and 13; *D.D. v Spain* ([CRC/C/80/D/4/2016](#)) para. 15; *M.T. v. Spain* ([CRC/C/82/D/17/2017](#)) para. 14(a); and *R.K. v. Spain* ([CRC/C/82/D/27/2017](#)) para. 10 (a).

<sup>8</sup> Please see, *V.W. v. Germany* ([CRC/C/87/D/75/2019](#)).

<sup>9</sup> Please see, [Statement by Mikiko Otani Chair of the Committee on the Rights of the Child at the 76th session of the General Assembly](#).

<sup>10</sup> The final edited version of the inquiry report was published in May 2020.

## ANNEX

### OPIC recommendations in the Committee's COBs

The table below displays the recommendations that the Committee issued in its Concluding Observations with regards to the OPIC for the 6 State parties to the Convention on the Rights of the Child that were reviewed in 2021.

State party	Concluding Observations	OPIC status	Recommendations on OPIC
<u>87th online session</u>			
Tunisia	( <a href="#">CRC/C/TUN/CO/4-6</a> )	State Party	<p><b>Follow-up measures taken and progress achieved by the State party</b></p> <p><i>[The Committee] notes with appreciation the ratification, or accession to [...] the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.</i></p>
Luxembourg	( <a href="#">CRC/C/LUX/CO/5-6</a> )	State Party	<p><b>Dissemination, awareness-raising and training</b></p> <p><i>The Committee recommends, in particular, that the State party increase children's awareness of their rights under the Optional Protocol on a communications procedure and that it ensure that children have access to remedies at the domestic level.</i></p>
<u>88th session</u>			
Czech Republic	( <a href="#">CRC/C/CZE/CO/5-6</a> )	State Party	<p><b>Follow-up measures taken and progress achieved by the State party</b></p> <p><i>The Committee welcomes the ratification by the State party of the Optional Protocol on a communications procedure, in 2015</i></p>
Switzerland	( <a href="#">CRC/C/CHE/CO/5-6</a> )	State Party	<p><b>Follow-up measures taken and progress achieved by the State party</b></p> <p><i>The Committee notes with appreciation the ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure</i></p>
Poland	( <a href="#">CRC/C/POL/CO/5-6</a> )	Only Signatory	<p><b>Ratification of the Optional Protocol on a communications procedure</b></p> <p><i>The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights and the access to justice, ratify the Optional Protocol on a communications procedure.</i></p>
Eswatini	( <a href="#">CRC/C/SWZ/CO/2-4</a> )	No Action	<p><b>Ratification of the Optional Protocol on a communications procedure</b></p> <p><i>The Committee recommends that the State party, in order to further strengthen the fulfilment of children's rights, consider ratifying the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.</i></p>