

Human Rights Watch

Backgrounder on the Case of Kheda Kungaeva

Trial of Yuri Budanov Set for February 28

Introduction

On March 27, 2000, Kheda Kungaeva, an eighteen-year-old woman, was taken from her home in Chechnya, beaten, raped, and murdered.¹ On February 28, 2001, the Rostov District Military Court will try Col. Yuri Budanov for Kungaeva's murder. It is the first and only case in which Russian authorities promptly and publicly acknowledged a crime, perpetrated by Russian federal forces against civilians in Chechnya, that constitutes a gross violation of international humanitarian and human rights law.²

The military has portrayed Budanov's behavior as an exceptional example of wanton criminality by a serviceman.³ However, the abduction, beating, rape, and murder of Kungaeva reflect a pattern of violations perpetrated by federal forces that has been exhaustively documented by Human Rights Watch and other nongovernmental organizations.⁴

¹ Kungaeva had just turned eighteen on March 22, 2000. Her given name was Elza, but she was called Kheda. Human Rights Watch interview with Vissa Kungaev, November 16, 2000, Karabulak, Ingushetia.

² Major Russian newspapers covered the case. For instance, see: "Colonel Budanov Arrested," *Izvestia*, March 31, 2000; Alan Kachmazov, "Budanov Hidden in a Known Location," *Izvestia*, April 8, 2000; March 31, 2000; Viktor Barantsev, "Colonel Budanov to Testify," *Komsomolskaya Pravda*, March 31, 2000; Andrei Korbut, "Crime Covered up for Three Days," *Nezavisimaya Gazeta*, March 31, 2000; Vakhtir Akhmedkhanov, "A Dishonor to the Uniform," *Obshchaia Gazeta*, April 6, 2000; "Colonel Budanov Faces Trial," *Kommersant*, February 7, 2001; Yulia Kalinina, "Murdered and Buried," *Moskovskii Komsomolets*, March 31, 2000.

³ For example, General Anatolii Kvashnin, chief of the General Staff of the Armed Forces of the Russian Federation, roundly condemned Budanov, while praising the armed forces' conduct in Chechnya. See *ITAR-TASS* (Moscow) "Tank regiment commander murdered a Chechnya Resident, he has been arrested, a criminal investigation has been launched, Anatolii Kvashnin informed Vladimir Putin," March 29, 2000. Gen. Kvashnin said, "The United Group of Forces' personnel is performing its constitutional duty in an honest manner, soldiers and officers do not spare their own lives, but at the same time the tank commander, as a matter of fact, turned into a bandit; scoundrels like him should be weeded out from [the army]."

⁴ For documentation on summary executions, see "Field Update on Chechnya," January 22, 2001; "February 5: A Day of Slaughter in Novye Aldi," *A Human Rights Watch Report*, vol. 12 no. 9, June 2000; "No Happiness Remains: Civilian Killings, Pillage, and Rape in Alkhan-Yurt, Chechnya," *A Human Rights Watch Report*, vol. 12 no. 5; "Civilian Killings in Staropromyslovski District of Grozny," *A Human Rights Watch Report*, vol. 12 no. 2; Memorial, "Human Rights Situation in the Republic of Chechnya, fall 2000," address given by Oleg Orlov at the Meeting of the Committee for Legal Affairs and Human Rights of the Council of Europe in Paris, December 2000, <http://www.memo.ru/hr/hotpoints/northkavkaz.htm> (February 1, 2001); Medecins du Monde, "Le Desespoir des civils tchetchenes," November 2000; Maura Reynolds, "War Has No Rules for Russian Forces Battling Chechen Rebels," *Los Angeles Times*, September 17, 2000. For documentation on arbitrary arrest and torture and inhuman treatment, see Human Rights Watch, see "Welcome to Hell: Arbitrary detention, torture, and extortion in Chechnya," *A Human Rights Watch Report*, October 2000; Human Rights Watch "Field Update on Chechnya." Vladimir Kalamonov, the special representative for protecting human rights and civil liberties in Chechnya reported 357 complaints of arbitrary detention in its December 2000 report. "Report on the Activity of the Special Representative of the President of the Russian Federation for Guaranteeing Rights and Freedoms of Men and Citizens in the Chechen Republic for the Year 2000," Moscow, December 2000, p. 8. According to this report, none of the thirty-five current criminal investigations against Russian soldiers are for arbitrary detention.

A diligent prosecution of Budanov would be the first step toward justice for Kungaeva, but should not on its own be interpreted as a sign that Russia is committed to a meaningful accountability process for violations of international human rights and humanitarian law by its forces in Chechnya. Russian authorities have concealed and obstructed the prosecution of its forces for such violations; acknowledgement, investigation, and prosecution of such crimes against civilians have been alarmingly few, and many were conducted in bad faith.⁵ A resolution adopted in April 2000 by the United Nations Commission on Human Rights called for Russia, among other things, to establish a national commission of inquiry to investigate such crimes, but Russia has not fulfilled the resolution's requirements.⁶

A forensic medical report, a copy of which was obtained by Human Rights Watch, cited a military procurator's report that on March 27 at 1:00 a.m., Budanov took Kheda Kungaeva, a civilian, from her home in Tangi-Chu and brought her to a military encampment. The forensic examiner concluded that Kungaeva was beaten, anally and vaginally penetrated by a hard object, and strangled at about 3:00 a.m.⁷ The report cited marks on her neck, the condition of her blood vessels, the tone of her skin, and the condition of her lungs. It found that other injuries such as bruising found on her face, her neck, her right eye, and her left breast were inflicted by a blow with a "blunt, hard object of limited surface," which occurred approximately one hour before her death.

Russian military authorities first publicly accused Budanov of raping and murdering Kungaeva, and subsequently indicted him only on charges of murder, kidnapping, and abuse of office. Although forensic evidence strongly suggests that Kungaeva was raped, no one is known to have been charged with her rape.

Human Rights Watch welcomes the initiative to prosecute the murder of Kheda Kungaeva, but remains concerned that authorities are ignoring evidence of rape.

We call on the procuracy to conduct prompt, thorough, and impartial investigations of all crimes committed by federal forces against civilians in Chechnya, including crimes of sexual violence, arbitrary detention, torture, and extrajudicial executions. We also call on the procuracy and the court to ensure that Budanov is afforded a fair trial.

Human Rights Watch has followed the Kungaeva case since we documented her alleged rape and murder.⁸ This memorandum describes the events surrounding her death

⁵ Human Rights Watch, "Memorandum on Domestic Prosecutions for Violations of International Human Rights and Humanitarian Law in Chechnya," February 9, 2001.

⁶ United Nations Commission on Human Rights resolution, "Situation in the Republic of Chechnya of the Russian Federation," E/CN.4/RES/2000/58, April 25, 2000; Human Rights Watch, "Memorandum on Accountability for Humanitarian Law Violations in Chechnya, October 20, 2000.

⁷ Report number 22, Forensic Medical Expertise. Armed Forces of the Russian Federation, Forensic Lab 124, Rostov-on-Don. April 30, 2000, hereinafter "Forensic medical report." The forensic physician was V. Lianenko.

⁸ See Human Rights Watch press release, "More Evidence of Rape by Russian Forces in Chechnya," March 30, 2000.

and the investigation, and analyzes the charges brought against Budanov. It is based on interviews with Kungaeva's immediate family, the family's lawyer, one other witness, the armed forces' forensic medical examiner's report, and other documents relevant to the case.

The events of March 27

On the night of March 26-27, 2000⁹ at about 1:00 a.m., the commander of division 13206 Col. Y.D. Budanov arrived in the village of Tangi-Chu in the Urus-Martan district of the Chechen Republic on APC no. 391 together with servicemen Sergeant Grigoriev, Sergeant Li-En-Shou, and Private Yegorov. On the orders of Colonel Budanov, his subordinates forcibly took citizen K.V. Kungaeva from house no.7 on Zarechni Lane and drove her to the division's encampment on the APC. Around 3:00 a.m. on March 27, 2000 Y.D. Budanov strangled K.V. Kungaeva in trailer 131 [reportedly Budanov's quarters¹⁰]. On the orders of Colonel Budanov, Private Yegorov, Sgt. Li-En-Shou and Sgt. Grigoriev took the body of K.V. Kungaeva and buried her in a forested area near the encampment. Around 10:00 a.m. on March 28, 2000, Kungaeva's body was exhumed.¹¹

Vissa Kungaev, Kheda Kungaeva's father, provided further detail of the events to Human Rights Watch. He said that between midnight and 1:00 a.m. on March 27, 2000, a loud noise woke the Kungaev family. An armored personnel carrier (APC) drove up to their house on the outskirts of the village of Tangi-Chu, carrying three Russian soldiers, and their commander, Colonel Budanov. Kungaev warned his five children and went to his brother's nearby home to seek help.¹²

According to the Kungaev family, armed soldiers entered the Kungaev house. Budanov stood in the corridor while two soldiers entered the bedroom and others guarded the house. First they brought Kungaev's younger daughter, Khava, out of the room, but when she screamed, Budanov reportedly said, "Let her go, take that one." The soldiers then brought out the eldest daughter, Kheda, took her outside, and drove her away in the APC. Vissa Kungaev then returned to his house, only to be told by his children that Kheda Kungaeva had been taken by the soldiers. Kungaev's brother, a neighbor, said the APC bore the number 391.¹³ Many have reported that Budanov was drunk at the time.

Later on March 27, a group of villagers obtained permission from local Russian forces to travel to Urus-Martan, seven kilometers away, to search for Kungaeva. They believed she might have been taken to one of two detention facilities run by federal forces in that town. Two witnesses told Human Rights Watch that a federal commander

⁹ Russia held its presidential election on March 26, and Vladimir Putin was elected.

¹⁰ Anatolii Yurkin, "Russian Commander Questioned in Rape, Murder Case," ITAR-TASS, March 30, 2000.

¹¹ Forensic Medical Report, p.1.

¹² Human Rights Watch interview with Vissa Kungaev, November 16, 2000, Karabulak, Ingushetia.

¹³ Human Rights Watch interview with "B.D.," March 29, 2000, Karabulak, Ingushetia. Also see Human Rights Watch press release, "More Evidence of Rape by Russian Forces in Chechnya."

in Urus-Martan told the villagers that Kungaeva had been raped by drunken men and was dead.¹⁴

According to Kungaev, Budanov's tank regiment had been encamped just outside Tangi-Chu since February 2000, and Budanov himself had a notorious reputation among villagers. About ten days before the rape and murder of Kungaeva, Budanov reportedly arbitrarily searched and looted several homes in Tangi Chu, and on March 25 he reportedly looted and threatened to torch several other homes.¹⁵

The aftermath and initial investigation

The military responded immediately to Kungaeva's rape and murder, promptly taking Budanov into custody, and assisting the Kungaev family; they also condemned Budanov at the highest levels, without awaiting the outcome of a court proceeding. Federal soldiers returned Kungaeva's body to her family on the evening of March 28, 2000. Maj.-Gen. Alexander Verbitskii told villagers that Budanov had raped and then strangled Kungaeva, and promised that justice would be severe and swift.¹⁶

Top Russian military officials in the Chechnya war attended Kungaeva's funeral on March 29, including Col.-Gen. Valery Baranov, acting commander of the United Group of Forces in Chechnya at the time, Maj.-Gen. Valery Gerasimov, acting commander of the Western Group of Forces, and his deputy, Major-General Verbitskii. Vissa Kungaev said that the generals were very helpful, paid for the funeral, asked for his forgiveness, and expressed sympathy.¹⁷

Budanov was arrested on March 29. According to press reports, Budanov claimed that Kungaeva was a sniper, and that he had gone into a rage while questioning her. He reportedly admitting killing her, but denied the rape charges.¹⁸

On March 29, 2000, Anatolii Kvashnin, chief of the General Staff of the Armed Forces of the Russian Federation, appeared on national television to announce to President Putin and the nation the arrest of Budanov in the grisly case. Kvashnin accused Budanov of "humiliating" and murdering Kungaeva, and denounced the colonel's behavior as "barbarous" and "disgraceful."¹⁹

Vissa Kungaev told Human Rights Watch that initially, the investigation seemed satisfactory. He reported meeting with investigators in Tangi-Chu and in Urus-Martan, and reported that investigators also questioned family members and villagers. Kungaev's lawyer said that the investigation established that no members of the Kungaev family

¹⁴ Human Rights Watch interviews, "A.B." and "B.D.," March 29, 2000, Karabulak, Ingushetia.

¹⁵ This incident was reported in a complaint filed on May 5, 2000 by the head of the Tangi-Chu village administration to the military procuracy.

¹⁶ Human Rights Watch interview, Vissa Kungaev, November 16, 2000.

¹⁷ Ibid.

¹⁸ David Filipov, "Chechnya Murder Case Tests Russian Justice," *Boston Globe*, September 19, 2000; Vasilii Kingadze, "Vesti" news program, *Russian Television and Radio*, March 31, 2000; "Colonel Budanov Faces Trial," *Kommersant*, February 7, 2001.

¹⁹ ITAR-TASS, "Tank regiment commander murdered a Chechnya Resident."

were snipers or fighters.²⁰ However, after six months had passed, Kungaev worried that the investigation had stalled, and sent petitions to the federal military procuracy, the general procuracy, and the Duma, expressing concern about the apparent halt to the investigation and urging that it continue. In October 2000, Kungaev learned that the charges against Budanov did not include rape, and became especially concerned about the investigation at that point.

When he spoke with Human Rights Watch in early February 2001, after authorities had closed the investigation, Kungaev expressed shock and regret that Budanov had not been charged with rape. “They took away the most important charge,” he said.²¹

Kungaev’s reaction to the failure to prosecute the rape of his daughter may reflect the view common in Chechnya that rape ruins the “honor” not only of the victim but of her extended family. For this reason, families take extreme measures to guard women against rape, and rape is considered by some a crime worse than murder.²²

The charges against Budanov and lack of a rape prosecution

Budanov was charged with three crimes: kidnapping resulting in death, abuse of office accompanied by violence with serious consequences, and murder of an abductee. No charges have been brought expressly for the beating and torture Kungaeva endured prior to her death.²³

Initially, the case of Kheda Kungaeva appeared unique—not in the brutality endured by a Chechen civilian at the hands of federal forces, which was all too familiar—but because top military officials publicly acknowledged and promptly investigated the crime. However, the failure to bring charges of rape, despite the presence of conclusive forensic evidence of anal and vaginal penetration just before her death, raises a concern that authorities are not prosecuting the case fully.²⁴

Budanov claimed that he detained Kungaeva on suspicion of being a sniper, and that he killed her during interrogation. The investigation, however, reportedly found that no member of the Kungaev family had in any way been suspected of involvement in

²⁰ Irina Dementieva, “The Budanov Case is Sent to Court,” *Obshchaia Gazeta*, February 14, 2001.

²¹ Human Rights Watch telephone interview with Vissa Kungaev, February 8, 2001.

²² For documentation of rapes perpetrated by federal forces, see Human Rights Watch, “No Happiness Remains: Civilian killings, pillage and rape in Alkhan-Yurt, Chechnya”; Human Rights Watch, “Rape Allegations Surface in Chechnya,” press release, January 20, 2000; Human Rights Watch, “More Allegations of Rape by Russian Forces in Chechnya,” press release, March 30, 2000.

²³ Such abuse may have been dealt with in the charge of exceeding one’s official position through violence. This is the charge usually brought against Russian law enforcement agents prosecuted for torture. See Human Rights Watch, “Confessions at Any Cost: Police Torture in Russia,” *A Human Rights Watch Report*, November 1999.

²⁴ Under article 3 of Russia’s criminal procedure code, the procuracy is obliged to institute criminal proceedings. Article 3 reads: “Obligation to institute a criminal case and investigate crime: The court, procurator, investigator and organ of investigation are obliged within their jurisdiction to institute a criminal case in every instance of the discovery of signs of a crime, to take all measures stipulated by law to determine the events of the crime, the individuals guilty of committing the crime, and their punishment.”

criminal activity.²⁵ Budanov used his official position and a military vehicle to remove Kungaeva from her home, and detained Kungaeva at a military installation. He is charged with exceeding (*prevysheniye*) his official position with violence resulting in serious consequences, which is punishable by three to ten years of imprisonment (article 286.3 of the criminal code).²⁶ Budanov, if found guilty of kidnapping resulting in serious consequences or accidental death, would face five to fifteen years imprisonment.²⁷

Budanov has also been charged with premeditated murder of an abductee, the most severe charge he faces. If convicted of murder of an abductee, Budanov could face a sentence from at least eight years to life imprisonment, or the death penalty.²⁸ If convicted of intentional homicide, he would face a sentence of six to fifteen years' imprisonment.²⁹ A finding that Budanov committed the murder in a state of extreme distress, as provided for under article 107, would make the crime punishable by up to three years of imprisonment, but the sentence would be covered by the May 2000 amnesty.³⁰

²⁵ See Irena Dement'eva, "The Budanov Case Has Been Sent to Court," *Obshchaia Gazeta*, February 14, 2001.

²⁶ Article 286.3 of the Russian criminal code reads: "Exceeding official powers. ...3) Such acts, stipulated in the first and second sections, if committed: a) with the use of violence; b) with the use of weapons or special methods; c) with infliction of severe consequences is punishable by three to ten years imprisonment with up to three years suspension from holding official posts." Article 285 covers abuse (*zloupotreblenie*) of office.

²⁷ Budanov is charged with article 126, section 3. Article 126 of the Russian criminal code reads: "Kidnapping. 1. Kidnapping is punishable by four to eight years' imprisonment. 2. Kidnapping, committed: a) by a group of people through previous agreement; b) more than once; c) with the use of lethal or dangerous force; d) with the use of weapons or objects used as weapons; e) in relation to a minor; f) in relation to a pregnant woman; g) in relation to two or more people; h) out of mercenary motives, is punishable by five to ten years imprisonment. 3. Acts, stipulated in the first two sections, if carried out by an organized group or resulting in the death or severe injury of the captive due to carelessness, are punishable by five to fifteen years imprisonment." Notably, the procuracy did not charge Budanov with unlawful detention resulting in serious consequences (article 301.3), which carries a sentence of three to eight years of imprisonment.

²⁸ Under a 1999 Constitutional Court ruling, judges may not impose a death sentence until trial by jury was available throughout the Russian Federation. However, the criminal code has not been amended to remove death as a sentence for article 105.2.c.

²⁹ Budanov is charged under article 105.2(c). Article 105 of the Russian criminal code reads: "Murder. 1. Murder, that is premeditated causing of death to another person, is punishable by six to fifteen years of imprisonment. 2. Murder: [...]c) of a person known to be in a helpless condition, or a person kidnapped or a hostage; [...] is punishable by eight to twenty years imprisonment or the death penalty or lifetime imprisonment."

³⁰ Article 107 of the Russian criminal code reads: "Murder, committed in a state of distress. 1. Murder, committed in a condition of sudden mental disturbance, caused by violence, insult, severe indignity or any wrongful or amoral acts, or by an extended psychotraumatic situation, arisen in connection with systematic wrongful or amoral behavior of the victim is punishable by up to three years deprivation of freedom or imprisonment." "On the Declaration of amnesty in connection with the 55th anniversary of victory in the great patriotic war 1941-1945," No. 398-III GD. Adopted by the State Duma on May 26, 2000. The full text was published in *Rossiskaya Gazeta*, May 30, 2000, p. 4. The amnesty provided for the release of all prisoners in the Russian Federation serving sentences of three years or less (approximately 120,000 prisoners) and also amnestied those under investigation or indictment for crimes committed before May 26, 2000 that carry a maximum sentence of three years or less. The law was intended primarily to relieve overcrowding in Russia's pris on system. Human Rights Watch takes no position on the amnesty, but is concerned that combined with the poor quality of investigations, the amnesty may serve to undermine

Three of Budanov's subordinates, Sergeant Li-En-Shou, Sergeant Grigoriev, and Private Yegorev, were charged with concealing a serious crime.³¹ According to a press report, one of these men was also charged with desecration of a corpse.³² While it is unclear what specific criminal act triggered this charge, Human Rights Watch is concerned that it was brought in an attempt to portray the sexual assault as an act that occurred after her death, in order to avoid bringing rape charges. Charges against all three were simultaneously brought and dropped under the May 26, 2000 amnesty law.

The military procuracy declined to answer Human Rights Watch's questions regarding the absence of rape charges in the Kungaeva case, citing the need for confidentiality in the proceedings.³³ It is therefore unclear whether the procuracy is denying that she was raped, or whether it is claiming that prosecutors have not identified a suspect in the rape.

However, the forensic examination of Kungaeva's body, which took place on March 28 in the village of Tangi-Chu, provides strong evidence that she was brutally sexually penetrated just prior to her murder. The forensic physician, a captain in the Russian military medical service, found three tears in her hymen and one in the mucus membrane of her rectum, and the report concludes that she was penetrated anally and vaginally by a blunt object, perhaps an erect penis, approximately one hour before her death:

On the body of K.V. Kungaeva these injuries were found: tears in the hymen and in the mucus membrane of the rectum, caused by insertion of a hard blunt object or objects into the rectum and into the vaginal passage, which is supported by the anatomical characteristics of the injuries specified. It cannot be ruled out that the object was an erect penis. ... The tears occurred not long before death (about one hour), which is indicated by the presence of blood flow in the tear of the mucus membrane of the rectum and hymen, blood flow into the mucus membrane in the area of the tears and the absence of signs of healing. In living people injuries such as these do not cause disruption of health or the loss of general well being and are not considered a threat to health.³⁴

It is unclear whether the forensic physician or any subsequent examiner collected, analyzed, or preserved other forensic evidence such as semen, fingerprints, hairs, clothing fibers, or other evidence that would have helped identify the perpetrator(s) of the rape.

accountability for violations of human rights and international humanitarian law committed by federal forces in Chechnya.

³¹ Under article 316 of the Russian criminal code, the maximum sentence for concealing a serious crime is two years imprisonment.

³² Article 244 of the Russian criminal code, carrying a maximum sentence of three years.

³³ Human Rights Watch, telephone conversations with Andrei Klemanov, head of investigation for the North Caucasus military procuracy; Dep. Col. Latif Gadzhimetov, chief of the North Caucasus military procuracy public relations department; and assistant to Sergei Loginov, head clerk for the North Caucasus Military Court, on February 14, 2001.

³⁴ Forensic medical report, p. 7.