

# **Indonesian anti-corruption agenda falters, but perhaps other things matter more**

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# **Indonesian anti-corruption agenda falters, but perhaps other things matter more**

## **Introduction**

Gerry van Klinken of the Royal Netherlands Institute of Southeast Asian and Caribbean Studies writes that despite the apparent appeal of Indonesian President Susilo Bambang Yudhoyono's record of fighting corruption, "foreigners would be wise not to jump to simple conclusions about the centrality of the anti-corruption agenda in this year's presidential contest. Not every group of voters views the corruption issue the same way." After a detailed review of recent anti-corruption activities and a strong counter-reaction, van Klinken concludes that the contest between Yudhoyono and Megawati could bring to light differences over the direction in which Indonesia as a whole should be going. Class is making its presence felt in subtle ways. An essentially negative anti-graft program by itself is not enough to transform Indonesian governance. Anti-corruption talk, and the increasingly verbalised resistance to it, is merely one part of a broader (though understated) debate about the nature of the state in Indonesia."

## **Essay: Indonesian anti-corruption agenda falters, but perhaps other things matter more**

Most polls are predicting that Indonesians will re-elect President Susilo Bambang Yudhoyono (SBY) in July this year. Many commentators add that they will do so mainly because of his strong record of fighting corruption. "Graft-Busting Yudhoyono To Keep Reins In Jakarta", read a headline in The Age, 2 January 2009. Australian foreign policymakers from the prime minister down are reportedly hoping quietly SBY will win (AAP, 5 March 2009). The polls predicting a SBY win are certainly

strong, and there is widespread agreement in Indonesia that corruption is a bad thing. Even so, foreigners would be wise not to jump to simple conclusions about the centrality of the anti-corruption agenda in this year's presidential contest. Not every group of voters views the corruption issue the same way. Some of those who appear to prioritise other agendas might have good reasons to do so. As far as foreign policymakers are concerned, trying to hear what Indonesians are saying they want their government to do might be more important than deciding it for them.

The SBY government's fight against corruption certainly made headlines in 2008. With elections around the corner, it became an increasingly political one. It moved into the upper echelons of parliament, the central bank, and even the cabinet. A review of the key stories of last year will demonstrate just how serious his government's anti-corruption credentials are. But more than that, it will illustrate some of the complexities of the issue. These must qualify the rather black-and-white storyline about corruption in the western press as the central governance issue in Indonesia.

The country's premier anti-corruption agency is a superbody named the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, KPK). In 2008 it continued to make spectacular arrests of top officials and parliamentarians. But its very success also stimulated increasingly organised resistance. The outgoing parliament has just dealt it a blow by failing to ratify a law to ensure its continuation.

An end to 'corruption, collusion and nepotism' was among the central demands of the 1998 reformasi movement that brought down President Suharto's New Order regime. Since then, public pressure has continued through a much more open press and frequent elections. Reforms occurred both inside the existing system and by creating special bodies outside it. Internal reforms have included the de-politicisation of the courts and the frequent appointment of new 'clean' attorneys. But they have been largely ineffective. Although the regular system enthusiastically prosecutes corrupters, the main motive appears to be to extort them, not to clean up corruption. Reports from the civil society organisation Indonesia Corruption Watch have detailed the complex of techniques that police, prosecutors and judges have deployed at every step of the way to extort bribes from those who enter the system.

## **The Lobby Queen and post-New Order corruption**

Just how little has changed inside the regular judicial system became clear in several high-profile cases in 2008. The most spectacular was the case of the 'Lobby Queen'. Many corruption scandals are still emerging from the aftermath of the banking bail-out that occurred during the Asian Economic Crisis of 1998. As in the West today, so in Indonesia in 1998, Indonesia's central Bank Indonesia (BI) gave 'last-resort lending' to dozens of commercial banks in the early months of the crisis. It totaled some Rp 144.5 trillion (US\$14 billion). But the recipient banks misused a substantial part of this so-called Bank Indonesia Liquidity Assistance for various illegal purposes. Of the dozens of recalcitrant debtors and errant bankers implicated in the scandal, only three have ever been imprisoned. One of the few not to escape the threat of prosecution was the tycoon Sjamsul Nursalim, who has chosen to live in Singapore for the time being. Attorney General M.A. Rachman dropped his case as a 'special gift' in June 2004. Six months later the new attorney general, Abdul Rahman Saleh, re-opened it. It took his successor, Hendarman Supandji, actually to form a team to take the case forward in mid-2007. Heading the team was prosecutor Urip Tri Gunawan.

Press accounts say Sjamsul Nursalim employed Artalyta Suryani, a skilled businesswoman, to try to get the case dropped again. She lobbied effectively through the busy round of receptions by which members of Indonesia's elite keep in touch, focusing on developing a friendship with Deputy Attorney General for Special Crimes, Kemas Yahya Rahman. On 29 February 2008, Kemas Yahya announced that the case against Nursalim had been dropped for lack of evidence. Two days later the

KPK caught prosecutor Urip, one of Kemas's underlings, carrying US\$660,000. It also arrested Artalyta. The embarrassed attorney general, Hendarman Supandji, made a public apology and removed Kemas Yahya and another implicated colleague named Muhammad Salim from office. It was the first time an active deputy attorney general had been removed. Artalyta was sentenced in July 2008 to five years in prison, and Urip in September to an unprecedented 20 years. But the attorney general did not resign, nor was he sacked.

The courts are as contaminated as the Attorney General's Office, and two big cases in the past 12 months did nothing to alter this image. Most corruption cases still go to the regular district courts, and most of the accused have been regional parliamentarians. In 2006, there were 265 corruption cases involving local legislative bodies with almost 1,000 suspects handled by prosecutorial offices across Indonesia. They handled 46 corruption cases implicating 61 provincial governors and district heads in the same year. One indicator suggesting judicial corruption is the high acquittal rate in the regular courts—just over half in 2008. The bulk of West Sumatra's provincial parliament was convicted of corruption by a district court in 2004 for embezzling half a million dollars of state funds two years earlier. But upon appeal, the Supreme Court threw out the charges against them all between late 2007 and mid-2008, without any prison time being served. In November 2007 the Medan district court acquitted 'Timber King' Adelin Lis of all charges of illegal logging in North Sumatra's protected forests. Adelin's case had been strengthened by a letter from the forestry minister, M.S. Kaban, stating that this case was 'only' an administrative matter. On the day of his release, the police announced they were laying fresh charges against Adelin, for money laundering. However, he had already slipped out of the country. The Judicial Commission announced it was preparing to investigate the five judges who ruled on this case.

Post-New Order office-holders hoping to be re-elected on their record increasingly found such familiar failures embarrassing political burdens. They supported the establishment of an anti-corruption 'superbody' outside the regular system. The need for foreign approval also played a role at first. The World Bank and USAID had done preparatory studies on legal development in the 1990s, and their recommendations proved influential in designing many reforms in 1998-99. When Law 31/1999 on the Eradication of Corruption required the establishment of a Corruption Eradication Commission, the Asian Development Bank helped with the planning and the International Monetary Fund made success one of its conditions for continued assistance. The law on the KPK and its associated Anti-Corruption Court was enacted in 2002, but some foot-dragging meant it took until the last days of President Megawati's term in office in mid-2004 for it to become a reality. The KPK replaced the Civil Servants Wealth Audit Commission (Komisi Pemeriksaan Kekayaan Penyelenggara Negara, KPKPN), which had made many embarrassing revelations. The KPK's terms of reference are designed to short-circuit problems with the existing system, such as police-public prosecutor rivalry, excessive prosecutorial discretion, and judicial procrastination. It has a substantial budget (US\$25 million in 2007) and around 450 'embedded' staff from the police and the Attorney General's Office. Even so, it can only take on the most high-profile among the corruption cases that arise. It sees itself as a 'trigger mechanism' for further reform.

In 2004 the outsider presidential candidate Susilo Bambang Yudhoyono (SBY) made fighting corruption a central plank of his election campaign. When he entered the palace in October 2004 he gave the KPK its head. On the strategy of starting with 'low-hanging fruit', it kicked off by detaining Aceh's governor, Abdullah Puteh, that December. The president issued a flurry of instructions (Inpres 5/2004), plans (RAN-PK) and letters authorising the investigation of senior officials, and in 2006 he signed the UN Convention Against Corruption. Over the period 2005-07, KPK pursued 27 high-profile cases through the special Anti-Corruption Court, located in South Jakarta, and won convictions in every case that went to trial. The KPK owes much of its grit to four deputy directors who come from outside the Attorney General's Office. Most famous among them was Amien

Sunaryadi, who left the giant multinational business advisory and auditing firm PricewaterhouseCoopers in 2003 to join KPK, reportedly taking a 90% pay cut for the privilege. He introduced new forensic auditing and investigative techniques, which led to some spectacular arrests.

## **KPK and the Bank Indonesia scandal**

In the past year, KPK arrests reached higher levels than ever before. The most spectacular cases arose once again from the liquidity assistance given to the banks in 1997-98 by the central bank. Bank Indonesia was unable to recover much of these loans from the recipient banks. In 2003 it formulated a draft amendment to the Law on Bank Indonesia that transferred the repayment obligation to the government. Bank Indonesia knew from experience that the larger the amount of money involved, the more it would cost to "persuade" parliament of the virtue of this move. "Bank Indonesia has been under extortion for so long", a source in the central bank told Tempo Magazine. A meeting of the Bank Indonesia board of governors in June 2003 decided to set aside Rp 100 billion (US\$10 million). Two-thirds was to help several indicted Bank Indonesia officials pay off prosecutors, and a third was for the parliamentarians. It was borrowed or otherwise appropriated from an educational fund intended to support the central bank's training institution, LPPI (Lembaga Pengembangan Perbankan Indonesia, Indonesian Banking Development Institute). On 28 January 2008, the bank's governor, Burhanuddin Abdullah, was arrested for misappropriating bank funds. This humiliation came just a few months after Global Finance magazine had named him the best central banker in 2007 and the Indonesian government had conferred on him the prestigious Mahaputra Award. In February 2008, KPK placed travel bans on all those present at the 2003 meeting that had taken the bribing decision along with Burhanuddin. One of them was deputy bank governor Aulia Pohan, who is related by marriage to President SBY. He had arranged to obtain the money from the educational fund. The president won praise for not intervening when Pohan too was arrested at the end of November 2008 and placed in police detention.

## **Parliamentary arrests and untouchables**

Two further arrests caused the president more headaches. They were of two members of the parliament's Commission IX on Finance and Banking, which was responsible for handling the Bank Indonesia law amendment. During hearings of the case at the Anti-Corruption Court in August 2008, one of the two, Hamka Yandhu, acknowledged he had handled the money, and proceeded to name those to whom he had distributed it. Envelopes contained between Rp 300 million and Rp 1 billion, depending on the seniority of the recipients. Fat envelopes are a common sight in the parliament building. Among the recipients this time were two members of parliament who are now in cabinet. M.S. Kaban is the forestry minister. Paskah Suzetta, who joined cabinet in a December 2005 reshuffle, is chief of the National Planning Agency and State Minister for National Development Planning. In 2003 he was the chairman of the working committee in charge of the Bank Indonesia law amendment. Forestry minister Kaban is close to the timber industry. Tackling illegal logging had been one of SBY's core election promises, but when in 2007 police arrested loggers who had accumulated a gigantic stockpile of illegal timber in Riau province, Kaban accused national police chief General Sutanto of threatening an industry that had created thousands of jobs and was generating foreign reserves. At about this time he also wrote his glowing letter in support of illegal logging suspect Adelin Lis.

SBY did not react to these allegations as resolutely as he might have done. Another of his election promises had been to sack any minister tainted by corruption. He had actually done this in May 2007, when he dismissed the State Secretary, Yusril Mahendra, and the Minister for Justice and Human Rights, Hamid Awaluddin, after allegations that they had helped Tommy Soeharto transfer

corruptly obtained money. He now called Kaban and Suzetta into his office to explain. 'Being veteran politicians' (as Tempo magazine put it), they each said they knew nothing about it. Afterwards the president said he would not suspend them. Commentators thought that, less than a year before elections, he had acted cautiously in order not to endanger support from their parties. President Yudhoyono's cabinet has representatives from eight different parties, with PDIP being the only large non-participant. Paskah Suzetta is deputy treasurer for the Golkar Party; Kaban chairs the (Muslim) Star and Crescent Party (PBB). KPK has since questioned Suzetta over the case.

Irresolution can also be found within the Corruption Eradication Commission itself, which evidently considers some people untouchable. Vice President Jusuf Kalla in 2005 became embroiled in controversy after the irregular purchase of 40 used German military helicopters. Governor Abdullah Puteh got 10 years in prison for the shoddy purchase of just one helicopter, but Kalla never faced an official investigation.

## **President Yuhoyono and the KPK**

President Susilo Bambang Yudhoyono's anti-corruption campaign has thus run into some serious problems. Nevertheless, I think it is fair to say that the most realistic hopes for the anti-corruption campaign still lie with his re-election in July 2009. Few believe he is personally corrupt. He and his wife have no personal foundations of the kind Soeharto used as slush funds. But he cannot do it all alone.

He needs political and business allies towards his re-election. Five years ago, each aspiring presidential team spent around US\$10 million. Vice President Jusuf Kalla has been among the most important of SBY's allies, both as head of Golkar and as one of Indonesia's wealthy entrepreneurs. Indonesia's richest man - until the current global crisis undid him - also sits in SBY's cabinet. Coordinating Minister for People's Welfare Aburizal Bakrie's family until recently owned 40% of Bumi Resources, Indonesia's largest coal producer. Both represent potential sources of embarrassment—arising, perhaps, out of Kalla's helicopters, Bakrie's Lapindo mud volcano in East Java, or Bakrie's special pleading for assistance over the Bumi Resources share price collapse. State agencies are also thought to remain cash cows for anyone who can gain control of them—and the stuff of scandal for opponents. Early in 2008, state oil and gas agency Pertamina's directors were once more replaced, amid allegations that the changes were driven by political factions hoping to obtain access to Pertamina funding. The Corruption Eradication Commission in July 2008 began examining reports from Indonesia Corruption Watch and the Supreme Audit Agency that some Rp 200 trillion (US\$22 billion) of Pertamina funds had been misappropriated over the period 2000–07. Much of this may have been lost to oil smuggling stimulated by high fuel subsidies, but Pertamina's role as a slush fund in Soeharto's days has not been forgotten.

A bigger problem for the anti-corruption agenda lies in parliament. KPK's daring actions began in 2008 to stimulate resistance among the politicians who approved its mandate in the first place. Last year KPK arrested six active parliamentarians in various cases. Some had been involved with the Bank Indonesia draft law bribery case mentioned above. Another was arrested over corruption in relation to the re-zoning of a mangrove forest and protected forest (this once more involved forestry minister Kaban as well), and yet another over bribery in the procurement of patrol boats. The most dramatic arrest of the year was that of a member of parliamentary Commission IV in charge of forestry. Al Amin Nasution belonged to the Islamic party PPP (Partai Persatuan Pembangunan, United Development Party). He had demanded Rp 2.2 billion (US\$242,000) to expedite the issue of a permit to convert protected forest land on Bintan Island so as to allow an office construction project. The money was to be distributed to all committee members, in the usual way. In April 2008, KPK officers arrested him at midnight in a luxurious Jakarta hotel, in the company of a prostitute and

with the cash and paperwork in his car, afterwards releasing transcripts of tapped phone conversations.

## Counter-pressures

The jolt of this public shaming caused many parliamentarians to stop carrying large amounts of cash to lunchtime meetings, and to modify their mobile phone habits. Some started speaking out against the KPK. PPP faction head Lukman Hakim Saifuddin said angrily: 'That extraordinary authority [of the KPK] must be controlled.' Commission III (legal affairs) called the KPK in for a closed-door session to answer questions about possible violations during the arrests of parliamentarians. Commission chairman Trimedya Panjaitan 'warned the KPK against attempting to discredit the legislative institution'. The commission had begun in May 2008 to draft a law to restrict phone tapping.

Even the president felt compelled to join the condemnation of KPK's strategy. In an opening speech to the National Law Convention in Jakarta on 15 April 2008 he told KPK, along with the Supreme Audit Agency and the Attorney General's Office, to avoid 'entrapping' citizens by taking advantage of their ignorance of laws and regulations on corruption. They should give priority to preventive measures over legal action, he said. Parliamentarians in the audience emitted loud cries of 'Amen!' The Al Amin Nasution arrest had triggered a failure of political nerve.

The major parties increasingly thought of the KPK mainly as a political weapon in the hands of their opponents. The opposition party PDIP complained the loudest. In March 2007, a joint KPK and Attorney General's Office team arrested Widjanarko, chief of the food logistics agency, Bulog, for diverting cash from an Australian cattle import scheme. (He had kept the cash in buckets in his bathroom.) He was a PDIP member with powerful connections. Like most of the large state enterprises, Bulog has long been a political cash cow. The government immediately replaced Widjanarko, but with a Golkar man—former Aceh caretaker governor Mustafa Abubakar. PDIP secretary-general Pramono Anung said the KPK was doing the government's bidding in undermining the PDIP ahead of 2009 elections. Commission III chairperson Trimedya Panjaitan, also from PDIP, echoed the sentiment. PDIP was exaggerating: in reality, plenty of prominent Golkar members have also been imprisoned. But there is no doubt that when corrupt practices are as universal as they are in Indonesia, any efforts to combat them inevitably become partisan and produce 'Why me?' reactions.

The future of the KPK-Anti-Corruption Court package is now threatened from a wholly different direction as well, albeit initially for a good reason. The Constitutional Court ruled in late 2006 that the Anti-Corruption Court was unconstitutional because it created 'legal uncertainty' for defendants, who could not be sure whether they would be sent to this court or to the regular district court. It gave parliament three years, until the end of 2009, to prepare fresh legislation. If parliament is unable to complete the new law in time to meet the December 2009 deadline, the Anti-Corruption Court will disappear by default. This would not end the effort to eradicate corruption, but anti-graft work could once more become a lucrative part of a predatory bureaucratic system.

To its credit, the government drafting committee resisted pressure to reduce the role of non-career ad hoc judges, who currently hold three of the five positions on the court and are less subject than career judges to corrupt inducements within the system. But the draft being discussed in parliament creates anti-corruption courts in every one of the over 450 districts, where they would fall under the regular district court. Non-career talent is scarcer there. When parliament closed in March ahead of the 9 April general elections, it had failed to pass the legislation. The big question now is whether the new parliament will rediscover its appetite for a strong Anti-Corruption Court, or whether it will neuter this special body, as has been the fate of other such bodies in the past.

## Beyond anti-corruption politics?

This takes us back to the bottom line, political will. Clearly that will is being weakened by some rapacious behaviour within the nation's top echelons. At the same time, a case can be made that a reduced priority on the anti-corruption campaign might not be the unmitigated failure it is often made out to be. At the elite level, as corruption greases wheels all over the world, anti-corruption efforts arguably seize them up again. Vice President Jusuf Kalla has openly suggested as much by repeatedly expressing scepticism about the value of a punitive anti-corruption drive. 'In the first five years, the KPK frightened us. That is important. However, in the future, the KPK cannot remain a frightening entity', he said in late 2007. A year earlier he told a KPK seminar that the nation's antigraft drive was hindering the economy. Though not particularly helpful to his president's campaign, his words contain some truth. Unspent development funds more than doubled between late 2004 and early 2006, and one credible explanation is that the anticorruption drive was discouraging government officials from making procurement decisions. Indeed, some independent observers have also argued that promoting an anti-corruption program as an end in itself could in fact do more harm than good.

For the public, too, anti-corruption measures are not all there is to politics. No doubt they are popular. The humiliation of high officials also has entertainment value. Suggestions that corruptors should be shot have been tabloid fare for decades, and the supreme penalty actually became a provision in the 1999 law on the eradication of corruption. Indonesia is unlikely to apply the Chinese shot in the neck any time soon, but local electorates have frequently punished corrupt or incompetent incumbents. Of 211 incumbents who sought a new mandate in regional polls in 2005, 87 were defeated. It is true that some of these contests are won on personal popularity rather than policy. The most famous example was an upset win in West Java's gubernatorial election in April 2008 by a young challenger who paired with movie and television star Dede Yusuf. But the West Java incumbent was under a KPK cloud, and that was a disaster for him. Similar problems caused defeats in South and Southeast Sulawesi.

Nevertheless, it is wise to be realistic about the extent of public outrage over the issue. Fighting corruption was a major plank in SBY's 2004 campaign, but security was just as important. The secessionist movement in Aceh and the terror bombings of preceding years were fresh in voters' minds. And President Yudhoyono knows that another economic crisis will divert attention from an anti-corruption campaign. When he had to raise fuel prices again in May 2008 to reduce burgeoning (and pro-rich) subsidies, he worried that demonstrations might produce deaths and thus martyrs, as they had done in 1998. He suspected allies of retired General Wiranto—his former military senior—of being behind the more vociferous protests. Wiranto's ambitious little political party Hanura quickly blamed 'world oil capitalists' for the reduction in fuel subsidies. A reasonably effective 'direct cash assistance' (BLT) program to compensate the poorest for rising fuel prices helped dampen protests.

Parliamentary elections are expected to bring about only marginal shifts in the political landscape, except that SBY's once fledgling Democratic Party is expected to rival Golkar in size. The two leading presidential candidates are expected to be SBY and PDIP chairperson (and former president) Megawati Soekarnoputri. Polls place them far ahead of the many other individuals expected to nominate. Megawati's popularity comes from her status as opposition leader, not from fond memories of her mediocre earlier period in office. She led Yudhoyono after he was forced to put up fuel prices in mid-2008, but cheaper fuel since then has given Yudhoyono back his commanding position in the polls. Of the trailing challengers, the only one with a remote chance seems to be retired Lieutenant-General Prabowo Subianto, who has been spending lavishly on television spots and wooing prominents from other parties.

The contest between Yudhoyono and Megawati could bring to light differences over the direction in which Indonesia as a whole should be going, including differences over what people want done about corruption. Class is making its presence felt in subtle ways. A September 2008 poll by the Indonesian Research and Development Institute (IRDI) showed significant class differences between supporters of Yudhoyono and Megawati. Better-educated middle class people, many of them civil servants, tended to prefer SBY, whereas poorly educated farmers and fishers, and the unemployed, preferred Megawati. SBY's 2004 anti-corruption campaign, so widely welcomed overseas, resonates in Indonesia mainly with the middle class. Even there it does not have overwhelming support. Vice President Jusuf Kalla, for example, whose scepticism was noted above, belongs to this same middle and upper group.

An essentially negative anti-graft program by itself is not enough to transform Indonesian governance. Only a program that connects positively with what Indonesians want their government to do for them can inspire. Anti-corruption talk, and the increasingly verbalised resistance to it, is merely one part of a broader (though much understated) debate about the nature of the state in Indonesia. SBY's technocratic vision of a lean clean state, internally competitive to improve "service delivery", contrasts with an older but still vital image of the state as a large and inclusive political community that will bring prosperity to all. PDIP upholds this image, and Prabowo's campaign even offers "socialism" as the answer to the nation's economic crisis. Neither have done much to flesh out the populist rhetoric with policy proposals. Moises Naim once noted in his 2005 article "Bad Medicine" in *Foreign Policy* critical of the "good governance" agenda "[t]he corruption obsession ... crowds out debate on other crucial problems". Indonesian politicians and foreign observers alike need to understand the wider contours of this debate much better than they do. What kind of government do Indonesians really want?

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## About the author

[Gerry van Klinken](#) is a research fellow with the Royal Netherlands Institute of Southeast Asian and Caribbean Studies (KITLV), where he coordinates the Dutch-Indonesian research program "In Search of Middle Indonesia", which studies middle classes and youth in provincial towns. He was editor of the magazine Inside Indonesia. In 2002-2004 he spent nine months as research advisor to the Commission for Reception, Truth and Reconciliation in East Timor (CAVR). In 2003 his *Minorities, modernity and the emerging nation; Christians in Indonesia*, a biographical approach, was published by KITLV Press. With Richard Tanter and Desmond Ball he co-edited the second edition of *Masters of Terror: the Indonesian military in East Timor in 1999* (Rowman and Littlefield, second edition 2006). His most recent books are *Communal violence and democratization in Indonesia; small town wars*, (Routledge, 2007); and (with Henk Schulte Nordholt), *Renegotiating boundaries; local politics in post-Suharto Indonesia*, Leiden: KITLV, 2007. Email: [klinken@kitlv.nl](mailto:klinken@kitlv.nl)

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Nautilus Institute  
608 San Miguel Ave., Berkeley, CA 94707-1535 | Phone: (510) 423-0372 | Email:  
[nautilus@nautilus.org](mailto:nautilus@nautilus.org)