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**Preparatory Commission for the International Criminal Court
Working Group on Rules of Procedure and Evidence
concerning Part 7 of the Statute**

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**Discussion paper submitted by the Coordinator concerning
Part 7 of the Rome Statute of the International Criminal
Court, on penalties**

Rules relating to article 77, paragraph 2 (a)

Article 77, paragraph 2 (a)

1. In determining whether to order a fine under article 77, paragraph 2 (a), and in fixing the amount of the fine, the Court shall determine whether imprisonment is a sufficient penalty. The Court shall take into due consideration the financial capacity of the convicted person, including any orders for forfeiture in accordance with article 77, paragraph 2 (b), and, as appropriate, any orders for reparation in accordance with article 75. The Court shall take into account, in addition to the factors referred to in rule 7.1, whether and to what degree the crime was motivated by personal financial gain.
2. A fine imposed under article 77, paragraph 2 (a), shall be set at an appropriate level. To this end, the Court shall, in addition to the factors referred to above, in particular take into consideration the damage and injuries caused as well as the proportionate gains derived from the crime by the perpetrator. Under no circumstances may the total amount exceed 75 per cent of the value of the convicted person's identifiable assets, liquid or realizable, and property, after deduction of an appropriate amount that would satisfy the financial needs of the convicted person and his or her dependents.
3. In imposing a fine, the Court shall allow the convicted person a reasonable period in which to pay the fine. The Court may provide for payment of a lump sum or by way of installments during that period.
4. In imposing a fine, the Court may, as an option, calculate it according to a system of daily fines. In such cases, the minimum duration shall be 30 days and the maximum

duration five years. The Court shall decide the total amount in accordance with paragraphs 1 and 2 of this rule. It shall determine the amount of daily payment in the light of the individual circumstances of the convicted person, including the financial needs of his or her dependents.

5. If the convicted person does not pay the fine imposed in accordance with the conditions set above, appropriate measures may be taken by the Court pursuant to rule [...] and in accordance with article 109 of the Statute. Where, in cases of continued willful non-payment, the Presidency, on its own motion or on the request of the Prosecutor, is satisfied that all available enforcement measures have been exhausted, it may as a last resort extend the term of imprisonment for a period not to exceed a quarter of such term or five years, whichever is less. Any such extension shall not apply in the case of life imprisonment.

6. In order to determine whether to order an extension and the period involved, the Presidency shall convene a hearing in camera for the purpose of obtaining the views of the sentenced person and the Prosecutor. The sentenced person shall have the right to be assisted by counsel.

7. In imposing a fine, the Court shall warn the convicted person that failure to pay the fine in accordance with the conditions set out above, may result in an extension of the period of imprisonment as described in this rule.
