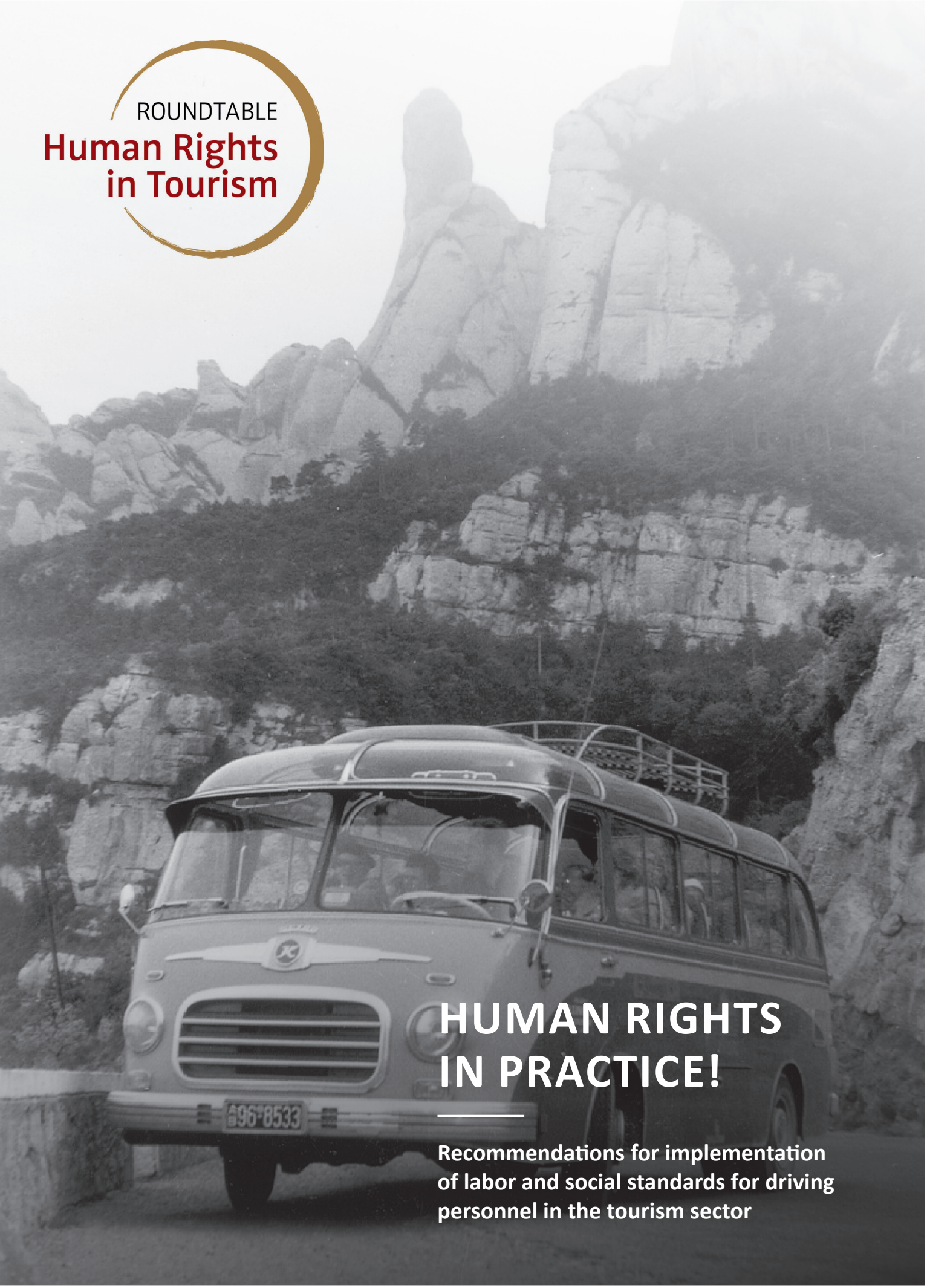
ROUNDTABLE
Human Rights in Tourism



# HUMAN RIGHTS IN PRACTICE!

**Recommendations for implementation of labor and social standards for driving personnel in the tourism sector**

**This guideline is presented by:**

ROUNDTABLE
Human Rights in Tourism

www. menschenrechte-im-tourismus.net/en/
info@menschenrechte-im-tourismus.net

## IMPRINT

| | |
|---|---|
| **Concept and content development** | Sibylle Baumgartner, Ruth Hopfer-Kubsch, Antje Monshausen, Elke Schnaus, Cathrine Schwenoha, Petra Thomas |
| **Graphic design** | Büroecco Kommunikationsdesign GmbH; www.bueroecco.de |
| **Picture credit** | Studiosus Reisen München GmbH |
| **Published in** | September 2015 |
| **© Editors** | Roundtable Menschenrechte im Tourismus |

# TRAVELLING EQUALS MOVEMENT

## Therefore hardly any trip can do without them: bus drivers taking travelers from A to B, private chauffeurs doing round trips or drivers of shuttle buses.

Hardly any other group of people has as much contact with the travelers during their trip. Hence their working conditions and their joy in doing their job directly influence customer satisfaction. The customer in return, often reacts very sensitive to bad working conditions of the driving personnel and it is not seldom that they mention this subject in the customer feedback. But most importantly the driving personnel's working hours have a direct influence on the travelers' safety: only rested and relaxed drivers can ensure a safe journey.

Besides international regulations, many countries have their own laws concerning working hours and maximum driving and rest periods for driving personnel. However, in many cases the control of their implementation by the state authorities is not guaranteed. At the same time the drivers themselves are not sensitive enough towards these issues. Since their employment opportunities are, in many cases, only seasonal, they try to work as much as possible during these employment times. Not only do they endanger themselves by doing so, but also the customers.

Tour operators face the challenge to make sure that their transport service providers comply with legal, as well as international and regional requirements for safety and labor standards. This is not only required by customers: According to the UN Guiding Principles on Business and Human Rights, tour operators are obliged to assess whether human rights are impacted in any way by themselves or by their suppliers. They are required to take measures to prevent involvement in potential human rights violations.

This working paper describes the recommended minimum requirements for social and labor standards concerning driving personnel in the transport sector. It also offers practical recommendations for their implementation and monitoring. The recommendations are designed in a way that makes them applicable worldwide as far as possible, even though adjustments to the local circumstances might be necessary. It can, for example, have an impact on the social status of the driver and therefore on his/her working conditions whether he/she also acts as tour guide (as it often is the case in Kenya) or whether he/she is accompanied by a tour guide as it is common in India. That is why we want to introduce you exemplary to some particular challenges at the end of the document.

The present paper complements the implementation guide for tour operators, created by the Roundtable Human Rights in Tourism, in a practice-oriented way.

### Roundtable Human Rights in Tourism means:

a multi-stakeholder initiative and sees itself as an open platform for the promotion of human rights in the tourism sector. It is an initiator for companies, organizations and institutions that stand up for the compliance of human rights in tourism.

Participation is open to all institutionalized actors that can identify with the principles of the Roundtable. It comprises tour operators, NGOs (Non-Governmental Organizations), associations and multipliers.

The UN Guiding Principles on Business and Human Rights, which describe the human rights due diligence for businesses, serve as framework for the activities of the Roundtable.

**www.menschenrechte-im-tourismus.net/en/**

# IMPLEMENTATION AND MONITORING

Driving personnel in tourism is often not employed directly by the tour operator, but through an external transport service provider. How can a tour operator ensure that the recommended minimum requirements are fulfilled by their transport service providers?

The following process steps serve as practice-oriented recommendation for tour operators who want to stand up for the compliance of the recommended minimum requirements within their sphere of influence.

## 1. LOCAL LAWS

» First the tour operator finds out about the local laws concerning the driving and rest periods. Corresponding clauses can often be found in the laws on road traffic safety.
» It can be very helpful to consult the local service partner or an external legal expert to put together the local regulations applying to the driving personnel in the tourism sector.

## 2. CONTRACTUAL PROVISIONS

» In a second step, the applicable laws and the recommended minimum requirements of the Roundtable (see attachment) are being compared in detail.
» Based on this analysis, contractual clauses, that are practice-oriented and adjusted to local conditions, are being developed.
» Afterwards these clauses are integrated into existing and new contracts between the tour operator and its transport service providers.

## 3. DIALOGUE WITH SERVICE PARTNERS

» In addition to the introduction of the new contract provisions, the tour operator enters into dialogue with the transport service providers and the local service partners. This way the new contract clauses can be discussed, implementation challenges can be identified and possible solution approaches can be worked out (e.g. adjustments of the travel route: cf. following step).

## 4. ADJUSTMENT OF TRAVEL ROUTES

» In cooperation with the local service partners and with reference to the new contract clauses, the tour operator analyzes the travel routes currently on offer. Hereby they review, for example, whether the requested driving and rest periods can be met in practice on the respective routes.
» Tour routes are adjusted as needed.

## 5. TRAININGS

» For the implementation of the new regulations it is essential that the affected driving personnel and also other relevant persons (tour guides, product managers etc.) are aware of the new regulations and understand them well.
» Through trainings, tour operators, local service partners and/or transport service providers make sure the driving personnel understands the new regulations. Hereby attention is particularly drawn to the rights of the driving personnel and their possibility to file complaints (cf. following step).

## 6. ENABLING FEEDBACK

» Part of the implementation of the new contractual provisions is to provide feedback and complaint mechanisms for persons directly affected.
» For these mechanisms to be effective, it is important that all relevant persons have knowledge about them, trust them and are able to make use of them.
» By analyzing the incoming feedback and complaints, it is possible to identify systematic problems with the implementation of the new regulations. Improvement measures can be defined accordingly.

## 7. MONITORING

» There are several complementary possibilities to monitor the implementation of the new regulations, e.g.: Interviewing tour guides, service partners and local service providers, evaluation of customer feedback, interviewing driving personnel

ROUNDTABLE Human Rights in Tourism

# CONTRACTUAL ARRANGEMENT OF LABOR- & SOCIAL STANDARDS

The Roundtable Human Rights in Tourism recommends defining the following requirements with the service partners by contract. The concrete contract clauses, based on **international agreements, recommendations and relevant regulations,** can be found in the appendix [1].

## Employment contracts

» All employees, including the driving personnel, are in possession of a valid employment contract that is in accordance with the national legal regulations.

## Regulations for driving & rest periods

» The contractual employment of drivers and bus assistants, if applicable, is carried out strictly in compliance with national law; it contains clear regulations of driving and rest periods, including empty runs from and to the depot. The possession of a valid driver's license for all drivers is an understood condition.

## Adequate remuneration

» The remuneration is to be based on the current national or local tariff system; it has to be adequate and should meet a living wage.
» Tips are a voluntary contribution and therefore not part of the regular remuneration. They must not be credited against the amount of the salary.

## Accident & health insurance coverage

» All drivers and bus assistants, if applicable, have to be insured within the scope of the legal regulations. Primarily an accident and health insurance is to be included.

## Obligation to inform & participation

» The deployment plan for drivers, bus assistants and local tour guides is to be made as long-term as possible and in agreement with the participants: it has to be the aim to allow affected employees an appropriate planning for their time off by designing a long-term deployment plan.
» The employees' rights of freedom of association and collective bargaining have to be respected.

Besides the contract components based on laws and regulations mentioned above, it is recommended to contractually bind the following points:

## Overnight stay / accommodation

» When drivers and bus assistants, if applicable, are scheduled for multiday work assignments, they are to be accommodated in a prebooked hotel with an appropriate standard. Proper sanitary facilities are a basic requirement.
» Drivers and bus assistants, if applicable, must not spend the night in the bus or other vehicles in any case – also for safety reasons.

## Meals allowance

» Depending on the local customs and with the requirement of prior agreements between the tour operator and the bus operator, the drivers and bus assistants, if applicable, receive a meals allowance for the time of their work assignment: The amount of the meal allowance is aligned to local expenses and covers the costs for meals which are not included.

## Anti-corruption clause

» Any actions which violate anti-corruption laws, regulations or guidelines have to be prohibited. These include, inter alia, offering or accepting illegal payments, monetary gifts and rewards; circumvention of rest periods by extra payments and/or manipulation of the trip recorder.
» In case of a concrete suspicion of corruption, it has to be reported immediately.

[1] EC-Regulation 561/2006, AETR Convention, UN Declaration of Human Rights, ILO Core Labour Standards, UN Guiding Principles on Business and Human Rights, OECD Guidelines und UNWTO-Ethics Code, Art. 9

# HUMAN RIGHTS

## caught between laws and realities.

Quite often, there are either tremendous gaps between legal regulations and the actual human rights' demands or at least substantial deficits related to their implementation. Likewise, the desires and needs of the people themselves can conflict with legal regulations. Examples would be the questions of the salaries as well as challenges concerning non-formalized education.

### The appropriate salary – balance between minimum wage and living wage

There are many countries where minimum wages apply. In reality though, they often range far below an earning that can ensure a living wage that allows a dignified life in the long term. This legal claim though is recorded in article 24 of the Universal Declaration of Human Rights.

This shows that it is crucial to compare the legal minimum wage level with the real situation in the country. Otherwise the drivers will try to find additional sources of income, e.g. by working during their rest periods. The seasonal concentration of tourism in many destinations increases the pressure on the drivers additionally. As a result, the consequences for the safety of the drivers and the customers are unpredictable.

One way for the tour operator to meet these challenges is to engage in dialogue with its service partners and their employees. Also it is necessary to not only consider legal minimum wages, but also local circumstances, in order to establish adequate remuneration. Cooperating with trade unions in this process can be helpful.

**FURTHER INFORMATION:**
www.wageindicator.org/main/salary/minimum-wage
www.cleanclothes.org/livingwage/calculating-a-living-wage
www.boeckler.de/pdf/ta_arbeitszeiten_mldb.pdf

### The dilemma: bus assistants caught between education and exploitation

A common practice to be found in the transport sector is the employment of bus assistants – either by the bus operators or by the drivers themselves – to perform auxiliary tasks. Most often they are under aged and highly dependent on the bus drivers. On one hand they contribute to the family income and are trained for their future profession as bus driver. On the other hand this dependency contains risks, because it can lead to exploitive child labor and sexual abuse and can conflict with the right of education.

It has to be considered though that a total ban of under aged bus assistants breaks with traditional structures and also the under aged assistants themselves would not want such a ban in many cases. Nevertheless, the tour operator has a due diligence when it comes to the well-being and the protection of its service partners. As a first step it can be helpful to insist on getting data about the bus assistants (like name, age), because this way, they escape the anonymity. Based on that, the tour operator can enlarge the insurance coverage and other standards that so far only applied for the drivers to include those persons. A risk analysis on this issue can help to develop strategies on how bus assistants can be supported on their way reaching their professional aim to become a driver.

# APPENDIX

## Example of a contractual design inside and outside of the EU

The following recommendations are based on the contractual terms of Studiosus Reisen München. These terms are already implemented for many years at Studiosus Reisen München and other members of the Roundtable have tested them in practice. They are also available in German and French on the website of the Roundtable Human Rights in Tourism.

### 1. DRIVING LIMITS

The bus company guarantees to fully comply with the following rules for driving times and rest periods. These rules are in accordance with the EC-Regulation 561/2006 of 15 March 2006.

#### Daily driving limits:

A driver can do a maximum of 9 hours driving per day. Twice in any week this may be increased to 10 hours. Once the daily driving limit has been reached, the driver must be instructed not to do any further driving.

#### Driving periods and breaks:

After a driving period of 4 ½ hours, the driver must take a break of at least 45 minutes (in case no rest period is taken). During these 45 minutes the driver must not do any other work.

#### Daily rest periods:

Between the end of one working day and the beginning of the next, a rest period of at least 11 hours has to be taken. Three times in a week this may be decreased to 9 hours.

#### Weekly rest periods:

When planning tours, the program has to be designed in a way that ensurees that the drivers will have the necessary rest periods. At the beginning of a tour, the service partner ensures that the drivers are well rested and have taken the required weekly rest periods. At the beginning of a tour, the driver must not be entitled to a rest period deriving from a previous period of time.

#### The following rest periods have to be observed:

The duration of a tour or driving day also includes the transfer of the coach from the bus depot to the meeting point with the group.

| EU | Non-EU |
|---|---|
| **Tours up to 6 days of duration** require no day off. | **Tours up to 12 days duration:** require no day off. |
| **Tours with 7 – 13 days duration** require a rest period of at least 1 x 24 hours. This rest period must be taken at the latest after 6 working days. | **Tours with 13 days duration:** require one day off, it must be taken on the 7th day of the trip. |
| **Tours with 14 – 21 days duration** require a first rest period of 1 x 24 hours to be taken after 6 working days. They furthermore require a second rest period of at least 1 x 45 hours to be taken continuously after a second period of 6 working days.<br>**Example:** 1 x 24 hours rest period during the first (to be taken at the latest on day 7 of the tour) and 1 x 45 hours rest period during the second week (to be taken at the latest on days 14 and 15 of the tour). | **Tours with 14 – 20 days duration:** require rest periods of 1 x 24 hours and one of 1 x 45 hours (the rest periods have to be already taken continuously after day 13 the latest, unless a rest period of 1 x 24 hours has been taken during the first 12 days of the trip).<br>**Example:** 1 x 24 hours rest period during the first week plus 1 x 45 hours rest period during the second week or 1 x 69 hours rest period during the second week. |
| **Tours with more than 21 days duration:** 1 x 24 hours rest period during the first week after 6 working days at the latest and 1 x 45 hours rest period continuously during the second week, after another period of maximum 6 working days. After the 21st day the following 3 days must be taken as rest period. | **Tours with more than 21 days duration** require rest periods of 1 x 24 hours and 2 x 45 hours. 1 x 24 hours plus 1 x 45 hours have to be taken during the second week at the latest. They furthermore require a rest period of 1 x 45 after day 21.<br>**Example:** 1 x 24 hours rest period during the first and 1 x 45 hours rest period during the second week plus 1 x 45 hours rest period during the beginning of the third week. |

## 2. AUTHORIZATION OF THE TOUR GUIDE

The tour guide is not authorised to make major changes to the route which had been determined in the itinerary previously sent to the bus company. Occasional detours of a maximum of 50 km each are allowed, given that the respective driving and rest periods of the driver are observed. Longer detours have to be approved by the tour operator.

The bus company and its service partners inform the drivers that the tour operator's tour guides are instructed to check the condition of the bus and makes sure that this measure can be carried out.

## 3. SUBCONTRACTING

**Subcontracting is only allowed after approval by the tour operator.** The requirements of this contract apply also for all subcontractors.

## SOCIAL RESPONSIBILITY, ENVIRONMENTAL PROTECTION AND HUMAN RIGHTS

The tour operator is actively involved in a socially responsible and environmentally friendly tour planning and tour organization. Hereby the tour operator especially emphasizes the conditions of hiring employees and the working conditions of the bus drivers and the bus assistants.
The bus company agrees to support the tour operator in its efforts in the fields of sustainable tourism and environmental protection as well as its efforts to sustain the local cultures. The agent will pay attention that the transportation companies heed to the following regulations:

## 4. CONDITIONS OF EMPLOYMENT OF BUS DRIVERS & BUS ASSISTANTS

The working hours of bus drivers are already regulated in this contract under the general rules for working hours as well as the daily and weekly resting periods (please refer to paragraph 1 of this contract).

The following regulations are based on the labor standards of the ILO, the International Labor Organization of the United Nations, and are effective for all member states of the UN. The hiring of drivers and bus assistants (if any) must strictly comply with the national regulations in regards to safety, maternity protection, leisure time, resting periods and follows the national and/or local standards for payment. The payment must be adequate and ensure at least a minimum standard of living. This also applies to the compensation of overtime. Service charges may be considered as part of the salary. Voluntary tips from the guests, however, do not qualify as part of the regular remuneration.

All drivers and bus assistants (if any) are employed under the national legal regulations and are in the possession of a written contract. In addition they must be insured in accordance with the legal regulations and must be in the possession of accident and health insurances.

The transport company ensures that all its employees are allowed to bring up their concerns and requests in an adequate way. Furthermore they must be informed about all important company issues that affect them. This also applies in countries in which the national laws do not permit labor unions of the employees.

Whenever empty runs between the hotel and the bus depot become necessary, the bus company must include these runs in the daily working and driving hours. The maximum driving distance allowed for such empty runs in cases of multiple overnights is 50 km or 45 minutes driving for each direction. Should longer empty runs be necessary it is required that, in agreement with the tour operator, a hotel room has to be reserved for the driver. Driving times between the home of the driver and the bus depot are not counted and are explicitly not part of this agreement.

On assignments of more than one night for the tour operator, the driver and the bus assistant (if any) stay in the same hotels as the groups. Should a group hotel be overbooked, an overnight in another hotel of equal standard close to the group hotel is acceptable. The booking for this will be made by the tour operator in conjunction with the group reservation. Should the driver explicitly not wish to stay in the hotel of the group, or it is not customary in the country to do so, the bus company will book an alternative accommodation in advance.

This must in any case be clean, neat and quiet and have access to clean sanitary facilities (WC, shower, sink) and to clean water.

An overnight of the bus drivers and bus assistants in the bus or in other vehicles is permitted under no circumstances. Should for security reasons a nightly supervision of the bus be required, the bus company or the hotel has to arrange this on spot.

Depending on what is customary, and in accordance with the negotiations between tour operator and transportation company, the bus drivers and bus assistants receive a meal allowance from the tour operator for the duration of their assignment. The amount of the allowance is determined depending on the local expense level and covers meals that are not already included with the group meals.

The scheduling of the assignments of the bus drivers and bus assistants should be made as far in advance as possible. The goal must be that such long term planning will enable the employees in question to plan their free time in a meaningful way.