



***Tut-uya*, a Customary Law Process in Resolving Administrative Cases at the Department of Education**

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ABSTRACT

The framework of the study revolves basically around the idea that *tut-uya*, an indigenous way of peacefully settling disputes, can be a potential scheme to be integrated and adopted as an Alternative Dispute Resolution (ADR) among the Indigenous Peoples schools in the Cordillera Administrative Region. This study presupposed that *tut-uya* processes impact speedy resolution of cases in schools. To understand the processes involved and the implications of *tut-uya* to the Alternative Dispute Resolution, descriptive qualitative research design was employed. There were eight selected respondents of the study based on snowball purposive sampling. Respondents had direct experience in using the processes of *tut-uya* in resolving administrative cases. Results showed that court and Civil Service Commission litigations were avoided by the respondents by using the *tut-uya* processes in resolving conflicts for school cases. The principles of restorative and transformative justice are reflected in the indigenous justice system practices and using the procedures of *tut-uya* is a viable mechanism in strengthening the implementation of Alternative Dispute Resolution at the Department of Education. Shared community values play a large role in resolving conflicts since among tribes, it is believed that an offense made to an individual is an offense made to the whole community.

Keywords: *Tut-uya, Inayan/Lawa, Administrative Dispute Resolution, Restorative Justice, Transformative Justice*

INTRODUCTION

The Indigenous Peoples Rights Act (IPRA) law states that Indigenous Peoples (IP) shall have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary practices. Given these bases, the Cordillera as an IP region has among its tribes, similar practices on dispute management such as *tut-uya*. It is the assumption of this study that indigenous knowledge, skills and practices are being used to settle conflicts not only among tribes but also cascades to formal organizations such as schools.

This study highlights the *tut-uya* process among the *iBontoks* (from Bontoc) in resolving disputes

and its implication in resolving administrative cases at the Department of Education (DepEd). Corpuz (2014), United Nations Special Rapporteur on the Rights of Indigenous Peoples, strongly points out the need to strengthen indigenous knowledge systems and practices (IKSP) which exist in the communities. This implies that there is a great challenge to integrate IKSP since these are the mechanisms that will help IPs survive in the community.

DepEd, like other national government agencies, developed its framework on Alternative Dispute Resolution (ADR) which is covered under DepEd Order no. 15, s. 2012. This initiative of DepEd is strongly responsive to the use of indigenous knowledge considering that indigenous communities like that of the *iBontocs* (from

justice is a collaborative process of criminal justice that focuses on repairing the harm done to people. He further adds that this focus on healing and related empowerment enhances social cohesion. Classen (1996), as cited by Nocella (2001), shows the principles of restorative justice where he argues that restorative justice is meant to bring healing and restoration of individuals and relationships.

This theory is supported by the study of Mbiti (1970) as cited by Elechi (2004) of African societies. He emphasized that an individual's wrongdoing does not only affect the direct victim or his family but undermines the community's well-being as well. This implies that healing needs to be done in the entire community because the community is responsible for the well-being of its individual members.

On the other hand, transformative justice is based on the idea that all individuals and groups affected by the crime come together and agree to design a process that maximizes their ability to resolve differences. It is social justice philosophy for peace using creative approaches in transforming conflicts and addressing issues. Nocella (2001) believes that transformative justice is opposed to the concept of someone getting fired, imprisoned or arrested. It is more concerned with looking for the good in others. This explains the importance of mediation, negotiation and community circles to transform conflicts. This backs up the idea that everyone from law enforcers to judges, lawyers, teachers, politicians, spiritual leaders and community members, must be involved in constructive dialogue.

Community norms as a concept, serve as the intervening variable in this study. This paper posits that the success of resolving disputes using customary mechanisms such as the *tut-uya* depends on agreed norms in the community. Respect for elders and *inayan, lawa* or literally translated as not doing any ill action, contribute to the successful use of the *tut-uya* mechanism.

This is also supported by Roder (2011) where he stated that one of the advantages of traditional justice institutions is that it functions well within a homogenous society. This implies that when

members of the community belong to the same tribal affiliation, there is a greater chance that they share similar beliefs and values which are important factors in dispute resolution. Hence, having a sense of shared beliefs and values would likely contribute to success in the use of indigenous practices. Otherwise, having a heterogeneous community may post some challenges when using customary laws. The findings, for example of the United States Institute of Peace (USIP, 2009) showed that it is not effective when litigants are not members of the same community or when there is ethnic and religious diversity.

Marchetti and Daly (2004) who articulated the success of indigenous courts and justice practices in Australia revealed in their findings that a number of elders or respected persons who are selected from the community sit with the magistrate and have different roles to play in the court room/ circles. They further added that the presence of elders or respected persons in court can be effective in imparting a sense of shame which comes from a fellow indigenous person rather than from a legal authority. Johnson (2014) also mentioned that elders are the embodiment of indigenous laws and their indigenous knowledge on peace-keeping has been effective for the millennia, prior to Euro-Canadian legal systems.

The values of *lawa* or *inayan* (not doing ill action) are best illustrated in the theory of restorative justice where it emphasizes accountability of the offender and condemning the act so that the offender will not do it again. Elechi (2004) reveals in his findings that if people are part of the decision-making process, they are more likely to accept and abide by the resolution. Figure 1 illustrates the theoretical framework of the study.

OBJECTIVES

The research was conducted to find out how *tut-uya* procedures can be utilized in settling administrative cases at the Department of Education. Specifically, it aimed to:

1. find out the features of *tut-uya* process used in resolving administrative conflicts;
2. determine the implications of *tut-uya* in the DepEd Alternative Dispute Resolution.

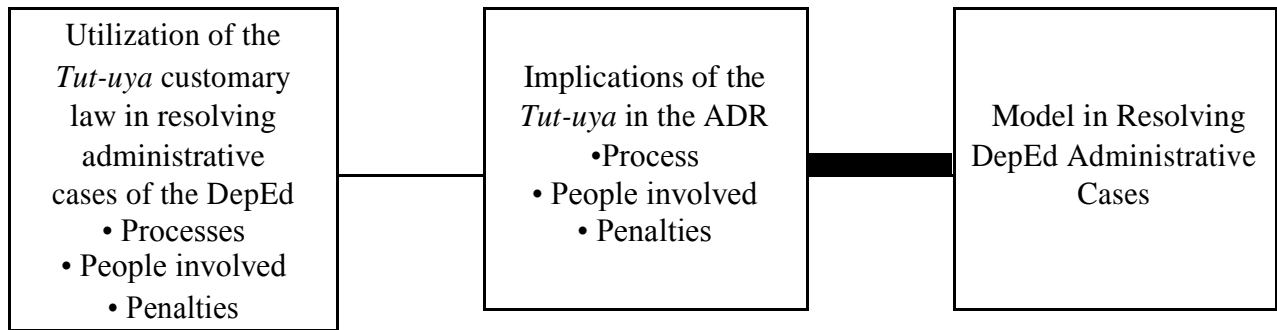


Figure 1. Schematic Diagram of the Study

METHODOLOGY

Research Design

The descriptive qualitative design was used in narrating the *tut-uya* processes as practiced by the respondents and the implication of the *tut-uya* processes in Administrative Dispute Resolution. To better understand the processes involved in the use of the *tut-uya*, the exploratory design was also used. The use of the semi-structured interview guides enabled the cases to surface from the respondents' practical experiences.

Profile of the Respondents

The key informants were identified through purposive sampling specifically Snowball Sampling. The researchers identified first the communities that strongly practice *tut-uya* procedures in resolving administrative cases. There were eight respondents consisting of DepEd school heads and head teachers. Respondents from the Division and Regional Offices are members of the investigating committee of the DepEd. Table 1 presents the profile of the respondents.

Most of the respondents were female. The gender imbalance can be explained by how teaching is regarded; that teaching is a less prestigious career for women where they are also paid less. This disparity is most pronounced in basic education. The respondents were in their mid-forties and most were married. This stage in life is where these people usually advance their careers and have more involvements and responsibilities. Finally, the respondents are novices in their academic positions as they occupied these from 0 to 5 years. Respondents were in general *iBontocs*, living in the *ili* (village) and had direct exposure

to a specialized pattern of activities in the village.

The study was conceptualized during the first semester of June, 2013. The analysis and interpretation of data commenced in February, 2014. Specifically, the conduct of the study was done in Bontoc, Mountain Province. Follow-up interviews were conducted in La Trinidad, Benguet in February, 2014.

Bontoc is the seat of the Department of Education's Division Office. Mountain Province has 10 municipalities: Barlig, Bauko, Besao, Bontoc (the provincial capital), Natonin, Paracelis, Sabangan, Sadanga, Sagada and Tadian. Bontoc has 16 barangays: Alab, Oriente, Balili, Bayyo, Bontoc proper, Caneo, Dalican, Guinaang, Maligcong, Samoki, Talubin, Tocucan, Bontoc Ili, Calutit and Alab proper.

Data Collection Instrument

The primary research method used was the Key Informant Interview (KII). The open-ended interview questions were directed to the Doctor of Philosophy students of the College of Teacher Education and the respondents were Principals of the Department of Education Schools Benguet Province. In the conduct of the interview to the selected participants, questions were asked by using the mother tongue, unless the informant preferred to communicate in English or *Ilocano*.

The interview agenda covered the following:

1. processes involved in *Tut-uya*;
2. processes involved in the Revised Rules of Procedure of the Department of Education in administrative cases;

Table 1. Profile of Respondents according to gender, age, civil status

GENDER	FREQUENCY	
Male	3	
Female	5	
AGE	Male	Female
31-35		1
36-40		1
41 and above	3	3
CIVIL STATUS		
Married	3	3
Single		2
NUMBER OF YEARS AS:	0-5	6-10
Head Teacher	3	
Principal	2	1
Legal Officer/Lawyer	1	
Administrative Office	1	
ETHNICITY		
Bontok	7	
Applai	0	
Ibaloi	0	
Ilokano	1	

3. perceptions of the respondents in the use of customary procedures in the DepEd administrative discipline code;

4. common administrative cases of DepEd employees in CAR.

The descriptive method using survey type was also used in this study. Survey type is a systematic method of gathering data used extensively in educational research to collect information that is not directly observable (Gall *et al.* (n. d.) as cited by Fox (1969). This type of survey was used in identifying the possible respondents and the particular municipality that uses *tut-uya*.

The case-method was also applied in this study to further illustrate patterns in the procedures and dynamics of the indigenous political institutions of Mountain Province, especially those in the sphere of customary law in relation to resolving administrative cases at the Department of Education.

The document review of existing researches, published or unpublished, and articles on indigenous political systems as secondary research method was utilized before, during and after collection of data in the study areas.

The researchers relied mostly on narratives. This is popularly used among the people of Mountain Province. It is through this narration that people in that cultural community are encouraged to reflect on their experiences and insights.

Photo-documentation of key informants interviewed and documentation of the results of the interviews were done for verification purposes. Cross-checking of data gathered in the field interview with existing related literatures was likewise done.

RESULTS AND DISCUSSIONS

This chapter discusses the presentation, interpretation and analysis of the result of interview with regard to the utilization of *tut-uya* in resolving administrative cases.

The features of *tut-uya* as used by the respondents are presented in Table 2.

Process: This study looked into the steps by which the respondents explained how conflicts were resolved. Interviews with the respondents showed that when there are conflicts arising in school, the elders are consulted. A group of respected elders or community members by virtue of their experiences and wisdom are called upon to hear the case and decide on the fines depending on the gravity of the case. The conflicts are usually settled in school.

The respondents said that a community member or aggrieved party consults the respected elders to inform of the conflict. When both parties are called upon, each party is asked to narrate his/her story.

Deciding appropriate judgement is the next step identified by the respondents. From the interviews, it was found out that while there are penalties imposed on the offender, the elders protect the offender by taking into consideration what will happen to his family, children or wife including communal interest. Murithi (2006) as cited by Hwedie and Rankopo (2009) support the statement as they describe the Botswana and Ghana indigenous conflict resolution mechanisms where principles of empathy, sharing and cooperation in dealing with common problems which underline the essence of humanity (*ubuntu*) remains to be the focus.

The provisions of settlement are discussed by the elders. When both parties agree on settlements and compensations, the respondents said that the elders summon both parties together for reconciliation.

Finally, the respondents found the customary mechanisms of solving disputes as more effective in solving conflicts whether personal or communal. They believed that the elders are instrumental in

settling disputes and when both parties believe in the community's shared value of not doing ill-action commonly termed as *lawa/inayan*, conflicts can be avoided.

According to the National Institute of Justice (NIJ) (2007), the customary way of resolving conflicts is based on the concepts of restorative justice where the principles of healing and living in harmony with all beings and nature remain important. Boege (2006) also supports the idea of NIJ by stating that traditional conflict transformation aims at the restoration of order and harmony of the community.

Brett (1987) wrote that *tut-uya* has the following procedures: *Ma-amongan* or gathering of the parties involved in the conflict in the *ato* (men's sleeping quarters) of the elders. Each litigant is asked to narrate the details of his/her story of the conflict situation. The elders listen and ask questions, and observe the reactions of the narrators.

The elders assess the merits of the case during the investigation before proceeding with their judgement. Majority rules policy is not used in the customary law but rather, the decision is arrived at by the consensus of the elders.

The decision of the elders will hold the offender accountable for his/her misdeed. If the offense is considered serious, the offender is given a penalty depending on its seriousness.

Should both parties be amenable to the decision handed by the elders, the final step is the conclusion of the *tut-uya* process which is the butchering of a chicken which is provided by the offender. This is followed by a prayer from the elders which symbolizes that justice has been served and the offender was forgiven, thus, he/she is reintegrated into the society. The ritual of eating the butchered chicken partaken by both parties further signifies the lifting of the taboo that endangers people in conflict. This ritual allows the conflicting individuals/families thereafter to eat and drink together without getting sick.

Table 2: Features of *tut-uya* as used by the respondents

FEATURES	PRACTICES OF THE RESPONDENTS
Process	<p>Any case from simple to complex is resolved using customary laws.</p> <p>The aggrieved party approaches the elders.</p> <p>Elders ask the parties to tell their stories.</p> <p>Elders and both parties have a dialogue. The elders make a decision and give advice to both parties.</p> <p>Elders bring both parties together to reconcile.</p> <p>They butcher a chicken/pig as required by the elders.</p> <p>Elders pray over the food and invoke the presence of “<i>kabunian</i>” and ancestors to watch over everyone.</p> <p>When the pact is broken by those involved in the case, the elders are again called to settle the dispute.</p>
People involved	<p>Elders are called to settle disputes in customary conflict resolution in Bontoc.</p> <p>A group of respected elders from the community by virtue of their experience and wisdom are called by the school head to hear cases and make settlements.</p> <p>The elders are respected people of the community who have shown honesty, integrity and sometimes those who have material wealth; political leaders in their community; president of the parents-teachers association and the school principal.</p> <p>Elders who are leaders in the <i>ato</i> are invited to hear the case.</p>
Decisions	<p>The decision of the elders is based on the following grounds: What will happen to the family when the decision is for him to go to jail or to pay so much of what he cannot afford?</p> <p>Both parties have to agree on the judgement.</p>
Penalties	<p>The elders require the offender to butcher chicken/pig and all will gather and partake of the meal to seal the case.</p> <p>Penalties such as replacement as in the case of robbery or payment through butchering of animals still prevail over paying in cash or going to jail.</p>

People Involved: The respondents claimed that the elders who heard the case are respected people of the community who have shown honesty, integrity and sometimes those who have material wealth. They are mostly men. It is evident in the findings that the respondents called the respected elders in the community who share the same characteristics as those mentioned in *tut-uya*. This implies that in indigenous communities, elders are esteemed members of the community, hence, when they are called to perform a ritual or hear a case, the ritual is highly respected.

Brett (1987) likewise stressed that elders have to be old men who are assumed to have had rich experiences in life, are articulate and have had occasion to make good judgments in past deliberations of cases, fair in the formulation of decisions as evidenced by past cases, and by the villagers’ affirmation of this fact. Though not an absolute necessity, prestige and wealth were also considered which may give an elder an edge over the others when choosing who to invite to hear such

cases. When gathered as a single body, the elders compose the judicial, legislative, and executive body of the village or *ili*.

NIJ (2007) supports the ideas of Brett (1987). As observed, among indigenous tribes of Australia, elders are selected as spokespersons responsible for opening and closing the meetings with prayers.

Hwedie and Rankopo (2009) also mentioned that among the indigenous peoples in Ghana, there is a Council of Elders which helps in governance, however, there are other people involved in the conflict resolution coming from all sectors of the society including traditional priests, herbalists and soothsayers.

Penalties: According to the respondents, the elders require the offender to butcher chicken. They will all gather and partake of the meal to close the case. This implies that even in these modern times, penalties such as replacement as in the case of robbery or payment through butchering of animals

still prevails over paying in cash or going to jail.

Boege (2006) emphasized context as an important component of traditional conflict resolution and depending on the context, compensation can either be cattle, goat, pig, garden produce or money shelled out. He emphasized the value of paying back with a symbolically equivalent amount which will lead to peace in the community.

Box 1 narrates a case of moral turpitude and habitual drunkenness and was resolved through the process of *tut-uya*. If heard in today's justice system, this will be penalized by suspension. In this case, the process included the aggrieved party consulting the elders of the community. This was followed by the School Head convening a committee consisting of the PTA President, barangay/village officials and the School Head. Then the dialogue and settlement were arranged and agreed upon. The case was resolved on the same day. It is evident from this case that the drinking spree and violence were done outside the school; however, the School Head took the responsibility of addressing it. This affirms Brett's (1987) claim that a violation made to a person is a violation made to the whole community, including the school. This case is also an implication that the indigenous practice of *tut-uya* is still the preferred way of resolving conflicts.

The practice of *tut-uya* using Alternative Dispute Resolution (ADR) is presented in Table 2.

A) Process: The following are its features: Dialogue or mediation as the means of settling disputes. This process facilitates communication and negotiation. It assists disputants towards reaching a voluntary and mutually acceptable settlement agreement. It is similar to some extent to the process reflected in the ADR where a case is filed in the mediation unit of the division, region or central office. Nonetheless, only light offenses that are penalized by reprimand are covered in the ADR. These can be simple discourtesy in the course of official duties; improper solicitation of contributions from subordinate employees and by teachers or school officials from school children; violation of reasonable office rules and regulations; frequent unauthorized tardiness; gambling

prohibited by law; refusal to render overtime services; disgracefulness, among others. This is followed by the selection of mediators, agreement to mediate, mediation proper or the conference and imposition of settlements.

Only cases that are penalized by reprimand will undergo mediation. This implies that all other cases outside of those covered under ADR shall be subjected to the process of the legal courts. The case of habitual drunkenness is not covered under ADR but under the DepEd Revised Rules of Administrative Cases (RRACS) where the penalty is suspension. Nonetheless, according to the respondents, the case was settled by the community elders. It is saying therefore, that in the indigenous communities where *tut-uya* is observed, any conflict arising even from people in government would make use of the concepts of the customary practice to resolve cases.

It further implies that for ADR to be used in indigenous communities such as in Mountain Province, there is a need to recognize that the IPs still value the indigenous knowledge of *tut-uya*. Thus, it has to consider this indigenous concept as this is accepted and practiced by the community.

B) People Involved: Respected elders comprise those involved in resolving disputes while mediators in the ADR are third party officials or employees of DepEd certified to handle mediation processes in the division, regional and national levels. As presented in Box 1, elders, barangay officials and the school principal were the mediators. This implies that if the ADR is to be implemented in indigenous communities, inclusion of elders will play a big role in the success of the mediation because they are respected and regarded as neutral mediators.

It was also cited by the respondents that these cases are resolved at the lowest level, the school. This implies that a mediation unit needs to be established at the school level comprising of respected community elders who are culture bearers and have leadership in the community not reflected in the policy guidelines of the ADR.

Box 1

The Case of a Male Teacher

Mr. T is a teacher and a habitual drunkard. There are times that he goes to school and conducts classes under the influence of liquor but during these times, he was never violent and disrespectful. In fact, anyone would not notice that he is intoxicated until the person gets near him.

One night, Mr. T and four other men went to a nearby store and decided to drink alcohol and at the middle of their discussions, Mr. T stood and moved away from the group. The other men assumed that he probably went to the comfort room. After few minutes, he returned to the area where they were drinking and suddenly attacked the other four men with his bolo. One of the men was caught off-guard so he was hit on his left arm but it was not fatal. While Mr. T was running amok, he was shouting and saying unacceptable words at the top of his voice which made the situation even worst. The three other men tried to stop him until everyone calmed down.

The following day was a school day and since Bontoc is a small town, the incident spread and reached the Principal. The offended party went to the elders where some were also political leaders of the community and discussed the matter with them. After knowing the incident, the school administrator organized a Hearing Committee composed of elders; the barangay council, the school head and the Barangay Captain. The meeting was presided by the elders.

The elders asked Mr. T to explain his behavior that night. Mr. T cannot give any other reason aside from his claim that he was not himself that night. He further mentioned that he was drunk on some other occasions but that was the first time that he challenged his friends. This claim of Mr. T was seconded by the four complainants. They agreed and further explained the series of events that took place that night to the other members of the committee. They all believed that he was under the control of an evil spirit.

On the same day, everything was settled. The elders asked the complainants about the penalty for the offense. A written agreement was likewise asked for him to make, to undergo rehabilitation regarding his habitual drunkenness.

In the course of the hearing, the school administrator explained the consequences of the case to Mr. T once the complaint would be elevated to the DepEd Regional Office. He further mentioned the possibility that Mr. T would lose his job permanently because aside from the drunkenness case, he also committed grave misconduct and conviction of a crime involving moral turpitude. In his speech, the presiding elder explained that the Igorots are forgiving and just people and since Mr. T is a married man with 4 children, it would create more problems if he loses his job. The case was closed with a feast where all parties partook of the chicken that was brought by the offender.

C) Penalties: Penalties under *tut-uya* are usually replacement of stolen goods, usually in the form of animals, or payment of damages.

The ADR though does not cite a specific penalty once there is a breach in the agreement for as long as the disputants and their respective counsels agree to the settlements and provisions. Hence, penalties according to the *tut-uya* process may be adopted in the ADR process.

Table 2: The practice of *Tut-uya* using the Alternative Dispute Resolution

FEATURES	PRACTICES OF THE RESPONDENTS
Process	<p>Customary practices are used more commonly in most of the schools divisions instead of ADR process such as in the case of Mountain Province</p> <p>Mediation is used and only those specified violations in the DepEd Order will undergo ADR</p> <p>A complaint is filed either verbally or in written form in any DepEd level</p> <p>Mediation Unit provides a roster of mediators chosen by the concerned parties.</p> <p>An initial conference is held within 15 calendar days from date of receiving the complaint.</p> <p>If a disputant does not appear in 2 initial conference, mediation is terminated and referred to proper authorities</p>
People involved	<p>Mediators are DepEd employees who are trained to conduct mediation</p> <p>Legal counsel may or may not be present</p>
Decisions	Decisions are made by the mediators
Penalties	<p>Settlements are agreed upon by the disputants; a form is filled up with the assistance of the mediator or the disputants' legal counsel</p> <p>Settlements need to be agreed upon within 30 calendar days from the date of the initial conference</p>

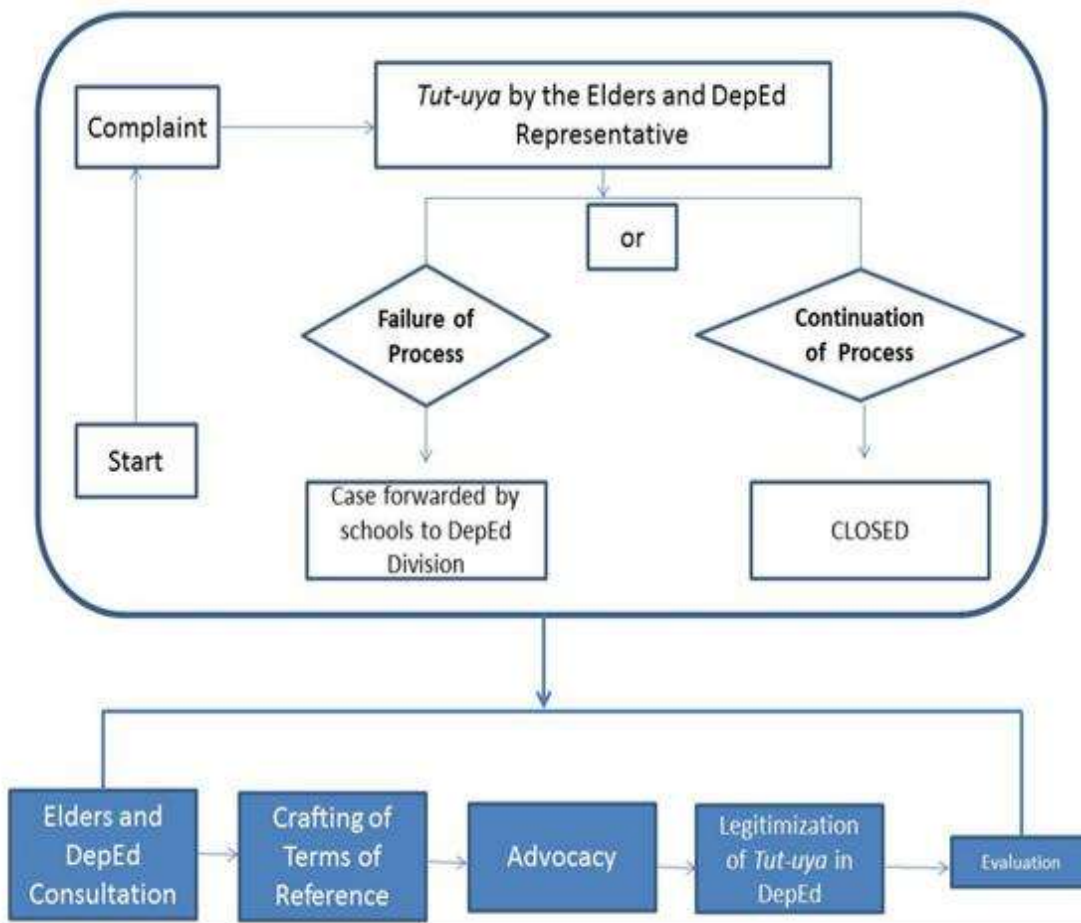


Figure 2. Faculo Model of the *Tut-uya* as a Potential Scheme in Resolving Administrative Cases at the Department of Education

CONCLUSIONS

Based on the results and findings, the following conclusions are drawn.

1. The council of elders who are members of the same community conduct the *tut-uya* or dialogue and butchering of animals such as chicken or pig as a penalty has been used by school heads in resolving administrative cases in their jurisdiction.
2. The use of the ADR in the DepEd lacked involvement of community elders as mediators.
3. The *tut-uya* as an indigenous practice for resolving conflicts within the community has a potential to be used in solving administrative cases at the DepEd.

RECOMMENDATIONS

Before administrative cases are forwarded to higher offices and legal courts, the following are recommended in the use of *tut-uya* procedures.

1. Disputants belonging to a similar community may follow the *tut-uya* process in settling disputes.
2. Further studies on the use of *tut-uya* in other government organizations are encouraged.
3. The model (as indicated in figure 2) is recommended as the process for integrating *tut-uya* in the DepEd Alternative Dispute Resolution.

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