Multilingualism in legal space: the issue of mutual understanding in ELF communication between defendants and interpreters

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ABSTRACT

Owing to its economic growth and social changes in the past two decades, China has become a popular destination for tourists, investors, and diverse communities of migrants. When foreign-language-speaking migrants interact with Chinese criminal justice system, they rely on interpreters to participate in the proceedings. Based on four-month trial observations in a Chinese city that is reported to have the highest concentration of foreign migrants in the country, this paper attempts to empirically explore the communicative complexity between foreign defendants and interpreters when they use English as a lingua franca. Drawing upon discourse analysis of recordings of seven criminal hearings that involve defendants from African countries, this paper shows how intercultural communication in the legal setting becomes challenging when primary participants in the interaction have divergent linguistic repertoires and speak different varieties of English. Variations in pronunciation become barriers to intelligibility; different legal culture and legal systems further complicate mutual understanding. This paper highlights how linguistic differences in interpreter-defendant communication disadvantage defendants in participating in judicial proceedings, which may undermine their legal rights and result in inequality and injustice.

KEYWORDS: English as a lingua franca; court interpreting; miscommunication; multilingualism; linguistic diversity; African migration

Introduction

The last three decades have seen China's emergence on the world stage for its astonishing economic growth and greater share in the global market (Dauderstädt & Stetten, 2005). Along with its rapid economic surge and social changes is the large influx of foreign visitors to the country. Though migration to China may not demonstrate what Vertovec calls 'super-diversity' (2007, 2010) in a strict sense, it has a high level of diversity in terms of different categories of migrants: comprising entrepreneurs, financiers, students, and professionals, who come from not only the Western developed countries, but also the developing world, including Southeast Asia and Africa.

Among them, the African diaspora is one of the most visible groups, with their large inflow primarily owing to the strengthening relations between China and African countries. The bilateral trade volume rose from US\$10 billion in 2002 to US\$200 billion in 2012 (Global Times, 2013). The expanding Sino-African trade has become powerful momentum for Chinese to invest in Africa and Africans to trade with China. For the first time in its history, China has become a popular destination for African migrants who now populate some big cities, predominantly in Guangdong and Zhejiang provinces.

The emergence of African communities has rendered the country 'socially and spatially more heterogeneous and multicultural' (Li, Ma & Xue, 2009, p. 703). Mathews and Yang (2012) argue that African enclave in China is a form of low-end

globalisation in contrast to the high-end globalisation. While the latter is typically associated with multinational corporations having business operations in China, involving a large amount of capital, with business done from a distance through telephones and the Internet, the former characterising African diasporas in China mostly demands physical presence of traders, featured by self-employment, labour intensiveness, unregulated markets. As a manufacturing powerhouse of low-price goods, China plays an essential role in supplying cheap products to the low-end globalisation. Many African traders often travel back and forth between China and Africa to work as suppliers for their home countries. The mobility of migration is described as ‘transiency’ by Castillo (2014, p. 239), differing from the traditional mode of migration that involves permanent or long-term settlement. Africans’ temporary migration to China is partly attributed to the fact that China has not established a formal legal framework governing immigration, as historically it experienced more emigration than immigration. Even though foreigners can apply for permanent residence under *Measures for the Administration of Examination and Approval of Foreigners’ Permanent Residence in China*, a regulation that came into force in 2004, the Chinese government has granted fewer than 5,000 permanent residence permits by 2011 (Sohu World, 2013). Because of the strict qualifications imposed on applications, it is very hard for Africans to obtain a permanent residence permit in China and they must renew their Chinese visas constantly. But visa extension can be a challenge because the government policy often fluctuates with the political and social situation. African migrants overstaying their visas is thus often featured in the local media along with

their sheer number. Additionally, there are news reports covering their clashes with local law enforcement agencies, and their involvement in a rising number of criminal cases (Zhang & Zheng, 2014).

When African migrants are involved in legal proceedings, they are entitled to the procedural right of access to interpreting services. Those facing criminal charges rely on interpreters to effectively participate in the trial proceedings. In communication with interpreters, they draw on communicative resources from their linguistic repertoires that comprise the totality of knowledge and functionality of all the linguistic varieties they have acquired throughout their life (Blommaert & Backus, 2011). These language resources travel from one place to another, across different layered and stratified scales (Blommaert, 2010), reflecting ‘the fragmented and highly diverse life trajectories and environments of such people’ (Blommaert & Dong, 2010, p. 370). The value of linguistic resources varies in different language markets (Bourdieu, 1991), and does not always perform the same function or function adequately. For African migrants in the multilingual Chinese courtroom, their capability of understanding courtroom interaction and making their utterances understood by others is dependent on the success of their communication with interpreters. Communication challenges or failure can put them at a disadvantage in making an effective defence, which may affect the outcome of the trial and sentencing, constituting a form of inequality and injustice.

Recent research on African diasporas in China (e.g. Bodomo, 2010; Castillo, 2014; Haugen, 2012; Han, 2013; Liu, 2013; Mathews & Yang, 2012) mostly deal with their migration trajectories, business activities, individual multilingual experience, with

little documentation on how they interact with the institution. Though some Chinese researchers have touched upon the issue of foreigner-related offences (e.g. Qiu, 2011, 2013; Jiang, Peng & Chen, 2013), their approach is primarily descriptive, lacking in analysis of empirical data. To fill the gap, this paper is to investigate the communication complexity in the multilingual Chinese courtroom, with a special focus on the issue of mutual understanding between African defendants and Chinese interpreters when they use English as a *lingua franca* (ELF).

This study, as part of a large project on the bilingual trial in China, adopts a qualitative approach. It is an exploratory research that draws upon my four-month observations of criminal hearings in three courts in the city of M in 2014. M is the largest city in south China, which was reported to have the highest concentration of foreign migrants in the sixth national population census of 2010 (National Bureau of Statistics of China, 2011) and most densely populated by African diasporas (Liang, 2014). Courts of the city handle many foreigner-related cases every year. Of all the criminal trials involving non-Chinese defendants that were adjudicated by the city's intermediate court between 2009 and 2011, over half were from Africa, with Nigerians ranking the highest subgroup, at 81 people; eighty percent of these non-Chinese defendants were brought in on drug-related offences (Dong, 2012). This is reflected in my trial observations and authentic trial recordings, with Africans facing drug-related accusations accounting for the largest percentage of the defendants. It should be pointed out that although Africans accounted for a majority of the total number of non-Chinese

criminal cases handled in the city of M during my fieldwork and in the recorded data, this is not the case in other parts of China.

In the fieldwork, I observed seven interpreter-mediated criminal hearings of first instance in which defendants from Africa were accused of drug-related offences. The ethnographic notes taken compose part of the data for the current paper. In addition, four video-recordings granted by the courts and three recordings of live trials¹ from the official online platform *Live Trials in Courts*², totalling around 20 hours, were specifically analysed. In the seven recordings, six defendants were from Nigeria, one from Ghana, and one Chinese co-defendant. Audio parts of the recordings were transcribed in line with the conventions in Conversation Analysis developed by Sacks, Schegloff and Jefferson (1974), with simplified adaptations for the purpose of this research (see Appendix). Literal translation of the source speech is provided in italics. Though the data sample is not large and cannot claim to be representative, this study offers not only an insight into communication practices in the interpreter-mediated courtroom of China, but also into general problems of multilingual communication under auspices of global migration, in particular into the multilinguality of institutional courtroom communication.

Besides observation and collection of trial recordings, I also attempted to do formal interviews with participants in the trial, but the whole process was full of setbacks. Similar to what Liang and Lu (2006) have experienced, there are cultural and social constraints in doing ethnographic fieldwork in Chinese courts and obtaining formal consent from Chinese interviewees is not easy. Due to the ideological concern,

legal professionals turned down my request for recorded interview. Defendants are kept in custody before and after the trial and it is almost impossible for me to approach them. Eventually I managed to interview four interpreters. Some of their remarks were incorporated into the analysis.

Court interpreting in China: a brief overview

When a defendant does not understand the language of the court, he or she is entitled to interpreting services provided by the institution, a procedural right protected under Article 9 of China's 2012 *Criminal Procedure Law* (CPL). This provision applies to both Chinese and non-Chinese defendants under Article 16 of the *CPL* and Article 401 of the *Explanatory Note on Applying the Criminal Procedural Law issued by the Supreme People's Court*. Apart from Article 9 of the CPL, no other national regulation has been enacted specifically governing the use of court interpreting in criminal proceedings. A close reading of Article 9, however, shows that this provision is silent on the vital issues of court interpreting: Who can be the interpreter? What are the qualifications required of an interpreter? What is the standard of interpretation in the trial? What training must an interpreter receive before he/she takes up the job? Failing to mention the operational details, this provision leaves the actual practice in the hands of judges. As a result, nationally there is a lack of consistency on who can work as court interpreters. The higher court of Zhejiang Province maintains a talent pool of qualified translators, most of whom are university teachers (Zhejiang Court, 2008); in some courts, university students are hired as interpreters (Li, 2013), and in other courts, police

officers or defendants' friends are permitted to take up the role (Ye et al, 2014).

In the field site, courts do not have their own full-time translators and interpreters. They outsource language services to translation companies through the tendering and bidding procedure of government procurement. According to a recruitment advertisement for part-time court interpreters posted on the website of one of these translation companies, any person that has a TEM-8 English certificate (a written proficiency exam for university English majors), adept at interpreting, with knowledge in shorthand, preferably with a law background, is qualified for the position. The expression of 'adept at interpreting' is vague for it does not specify criteria nor indicate any test to evaluate applicants' qualifications or language skills. An interpreter in the interview informed me that this company did not require applicants to have an interpreting certificate and often employed language teachers or postgraduate students to do court interpreting.

When there is a trial involving non-Mandarin-speaking defendants, court staff will identify interpreters through translation agencies that are in full control of the recruitment. The courts do not organise official tests, provide training or formulate interpreting guidelines. To what extent an interpreter is capable of doing court interpreting falls out of the courts' knowledge and concern. Before the trial, the interpreter may receive a copy of indictment for preparation, but there is no arrangement for the interpreter to meet or talk to trial participants, including the defendant.

English as a lingua franca in Chinese criminal courts

African defendants in Chinese courts mostly use English to communicate with interpreters, as it is difficult to find interpreters who can speak African indigenous languages. Africa is perhaps the most multilingual region in the world, with 1,000 to 1,140 languages spoken there today (Bokamba, 1982, p. 77). Most African nations lack an indigenous nationwide language. It is the former colonisers' languages, such as English, French, that are used as the official media of communication in administration, education and business (Bokamba, 1982).

English is the second national language in some African countries. For instance, Nigeria falls into the 'outer-circle' according to Kachru's model (1992) on the spread of English. Nigerian English has undergone certain nativisation and localisation, becoming a distinct variety of English. Many Africans speak indigenous languages as their mother tongue or L1 language, learn English as the second or foreign language through education. The linguistic repertoires of African migrants can be said to be composed of indigenous African languages, nativised English learned from school, and perhaps elements of pidgin or creole developed in the process of language contact between English and various African vernacular languages. Likewise, Chinese interpreters are not L1 speakers of English. They speak Mandarin, or a local Chinese variety as their mother tongue, and start to learn English in school. Different from English learners in Nigeria and Ghana, Chinese learn English as a foreign language and not as a second language. Standard English, mostly British and American English speeches, are the primary English varieties these Chinese English learners are exposed

to during their language learning. Chinese English learners, therefore, are not equipped with knowledge of different English varieties except the standard ones. Nor do they have many chances to be exposed to English in their daily life except in school or later in work.

When African defendants communicate with Chinese interpreters in English, their interaction falls into the ELF domain, which refers to ‘interaction between members of two or more different linguacultures in English, for none of whom English is the mother tongue’ (House, 1999, p. 74). The issue of understanding is one of the focal themes in the ELF studies. Smith (1992) categorises understanding problems in ELF into three types: intelligibility, comprehensibility, and interpretability. Intelligibility involves the lowest level of understanding, in which speakers are unable to recognise the words or utterances articulated by speakers of other English varieties; comprehensibility is the situation in which interlocutors are incapable of making sense of the meaning of words or utterances of certain English speakers, which is associated with locutionary force; interpretability pertains to illocutionary force and refers to the situation in which people are unable to understand the meaning behind words and utterances delivered by speakers of other varieties of English (Smith, 1992). Based on Smith’s categories, I conduct discourse analysis of the courtroom data to explore communication complexity between interpreters and defendants.

Prior to the analysis, it is important to clarify the use of the term of ‘*accent*’ in the following discussion. *Accent* is a vague linguistic concept with various definitions.

In this paper I use it in a non-technical way, to refer to ‘a particular way of pronouncing a language’ that is ‘regarded as striking or unfamiliar by the person making the judgement’ (Trask, 1996, p.4). It is used as part of everyday conversations when people talk about a way of speaking English that differs from the (standard) variety of English they are exposed to during English language learning. For instance, Chinese English learners, who are mostly familiar with American and British English, often speak of Nigerian English speakers having an accent. Sociolinguistically speaking, Nigerian English is one of the world Englishes with its distinct features, but people with no such knowledge tend to describe it as accented English.

The issue of mutual understanding in the ELF communication

To what extent African defendants’ English resources are adequate to enable them to communicate with Chinese interpreters is not tested before the trial. The data analysis shows that African defendants and Chinese interpreters face challenges in achieving mutual understanding in their ELF interaction. For one thing, African migrants have to struggle to understand what interpreters say. For another, they find it hard to make themselves understood even via interpreters. Information exchanges and meaning making between these two parties through English as a medium of communication turn out to be a cumbersome enterprise.

The issue of intelligibility

Communication breakdown can arise from interpreters’ inability to understand

defendants' statements. 'To interpret one must first understand' (Seleskovitch 1968, cited in Kurz, 2009, p. 180). Interpretation would not be possible if interpreters are unable to comprehend source messages (Du, 2016). The accented English spoken by African defendants pose challenges to interpreters in terms of intelligibility. Whether interpreters can comprehend what defendants say can greatly affect their mutual understanding and the subsequent interpreting production.

From the data, it is discovered that interpreters sometimes have difficulties in identifying the lexical items produced by African defendants and have to make repetitive efforts to figure out the words uttered. In the following excerpt, the Nigerian defendant is accused of smuggling drugs into China in his luggage. He claims that he has no idea of the illegality of his act. In investigating the motive of his visit to China, the prosecutor interrogates his previous job. Having heard the answer from the defendant (line 4), the interpreter, however, fails to recognise his words.

Excerpt (1)

01	P:	你在尼日利亚是干什么的?
02		<i>What did you do for a living in Nigeria?</i>
03	I:	What kind of JOB (.) did you take in Nigeria?
04	D:	I sell motor spare parts
05		/'motə/ /'spepas/
06	I:	You sell WHAT?↑
07	D:	I sell motor spare parts

08		<i>/'mɒtə/ /'spepəs/</i>
09	I:	Motor
10		<i>/'məʊə/</i>
11	D:	Spare parts
12		<i>/'spepəs/</i>
13	I:	Er?
14	D:	I sell (.) car spare parts
15		<i>/kɑ/ /'spepəs/</i>
16	I:	CAR?
17		<i>/kɑ:/</i>
18	D:	Yeah
19	I:	Spare parts
20		<i>/'sbeə 'pɑ:s/</i>
21	D:	Yeah
22	I:	Motor spare parts
23		<i>/'məʊtəʊ/ /'sbeə 'pɑ:s/</i>
24	D:	Yeah
25	I:	他在尼日利亚是卖汽车配件的
26		<i>He sold auto spare parts</i>

In this short extract, the communication problem does not derive from technical terms, uncommon expressions or complex syntactic structure. The trouble source is

Nigerian defendant's utterance '*motor spare parts*.' His articulation does not sound familiar to the male interpreter. Researchers have suggested (e.g. Simo Bobda, 2007; Gut, 2005) that Nigerian English is a distinct English variety with features significantly influenced by various indigenous Nigerian languages. Its prosody and sound system differ from those of Standard English varieties such as British English and American English. The diverging phonological patterns cause intelligibility difficulties even to English speakers of different varieties, and even to native speakers of British English studied by Tiffen (1974).

For the purpose of phonetic analysis, the software *Praat* is used to look into what speech sound is produced. In analysing the trouble source of understanding *motor spare parts*, it is shown in the spectrogram that the first vowel in *motor* is reduced from /əu/ into /o/, and the second vowel is pronounced as a schwa /ə/ as it has higher F2 than the previous vowel, suggesting that it is more fronted and less round. This means that the defendant pronounces *motor* as /'motə/. The two words *spare parts* are uttered together without any interval in between, close to a compound word, and the schwa in /eə/ is so weak that it is almost inaudible, hence sounding like /'sepas/. P in *spare* is pronounced unaspirated as / p /, with no evidence of voicing. Both /p/ and /ə/ are pronounced so faintly that it sounds as if they were dropped and the two words sound close to /'sepas/.

The defendant's pronunciation of *motor spare parts* is entirely unintelligible to the interpreter who signals with the overt non-understanding discourse marker WHAT in the next turn (line 06). The defendant then reproduces the whole sentence. This time,

the interpreter catches the pronunciation of the word *motor* and tries to repeat it. But he drops the /t/, uttering the word as /'məuə/ (line 09), which suggests that he cannot hear the /t/ sound in the defendant's previous production of *motor* and he still cannot identify which lexical item it refers to. The interpreter's utterance of only one word in line 9 is then supplemented by the defendant with another two words *spare parts* in the following turn (line 11). But the interpreter's uttering of 'er' (line 13), which is understood as a request for repair, again shows his confusion and failure of understanding. Unlike in the previous turns concerning *motor*, this time the interpreter is unable to even partially catch the sound of the two words.

Realising this problem, the defendant reformulates his answer with a lexical change from *motor* to *car* (line 14). Compared with *motor*, *car* is a simpler, more commonly used and easy-to-recognise word. Therefore, the interpreter recognises it and understands it immediately. After getting confirmation from the defendant about the utterance of *car* and then *spare parts*, the interpreter works out the lexical item that he has missed initially – *motor* – and then he is able to utter the entire phrase eventually (line 22).

One possible explanation for the interpreter's failure to identify the lexical item is the interpreter's and the defendant's different pronunciation of it. The phonetic spectrogram shows that the interpreter pronounces *motor spare parts* as /'məutəu/ /'sbeə 'pɑ:s/, different from the defendant's /'motə/ /'spepas/. The lexical item *motor* constitutes the biggest trouble source of unintelligibility to the interpreter. The combination of the defendant's production of a schwa in the second vowel of *motor*,

deviating from the interpreter's pronunciation of /əu/, his unclear utterance of /e/ rather than /eə/, his utterance of /sp/ instead of voicing /sb/ in *spare*, his vocalisation of a shorter /a/ instead of /a:/ in *parts*, and his way of pronouncing the stress of the syllable, render the sound of his articulation of the phrase *motor spare parts* different from the pronunciation with which the interpreter is familiar.

Moreover, the interpreter's performance failure may be associated with his own linguistic incompetence. As there is no law stipulating that only certified interpreters are eligible to do court interpreting, it is likely that there are incompetent interpreters working in the courts who may not be capable of deciphering the messages produced by the defendants.

It is true that African defendants' English pronunciation, deviating from the Standard English varieties, is challenging in terms of listening comprehension for second language speakers of English, such as Chinese interpreters, who are exposed to mostly Standard English varieties in their English learning experience. When asked about the challenge in communicating with African defendants in court interpreting, an interpreter in the interview regarded accent and pronunciation as the biggest difficulty.

Excerpt (2)

I: 我觉得首先一个就是口音的问题。很多非洲人的英语口语都是比较重的，这是第一个，然后第二个那就像我刚才说的一般来说他们的教育水平比较低，所以有时候他们说的这个英文有时候并不是因为口音导致很难理解而是根本那个音就发错了，我记得有一次开

庭的时候，有一被告辩称他说，哎我不知道我吞下去的是毒品，我以为是 floor，然后那时我在想什么 floor，然后后来就想哦，他估计想说的是 flour 就是那个面粉那个单词。

I think, first of all, it is (their) accent. Many Africans spoke English with strong accent. Second, as I mentioned, they were not well educated and sometimes it is not their accent, but their mispronunciation that creates incomprehension. I remember in one trial, one defendant argued that he was not aware what he had swallowed was drugs; he thought it was floor. Then I thought what floor he was referring to. Then I realised he might have intended to say flour.

As Kurz points it out, ‘the more the speaker’s pronunciation deviates from what the interpreter is used to, the more difficult the task for the interpreter in the first processing phase, i.e. comprehension’ (2009, p. 183). While interpreting typically involves three processes: receiving the message, analysing the message for meaning, and encoding the message into the target language, according to Gile’s Effort Models (2009), messages coded in a strong foreign accent can add to the difficulty of the interpretation task and may result in inaccurate or incomplete rendition (Kurz, 2009).

Such is the case demonstrated in Excerpt (3) in which a markedly higher loss of information is detected in the interpreted rendition.

Excerpt (3)

01	P:	你行李箱的毒品是从哪里来的？
02		<i>Where did you get the drugs in your luggage?</i>
03	I:	Where did you get the drugs inside the luggage?

04	D:	I don't know it was drug (.) I haven't seen it for the first time (.) it's
05		my friend in Nigeria who gave me (.) he asked me to help and said he
06		come to get it in two days
07	I:	他不知道是毒品 (.) 行李箱是一个尼日利亚的朋友给他的
08		<i>He didn't know those were drugs (.) the suitcase was given by his</i>
09		<i>Nigerian friend</i>
10	P:	你自己是否有行李?
11		<i>Did you have your luggage?</i>
12	I:	Do you have your own luggage?
13	D:	No (.) I don't have
14	I:	沒有
15		<i>No</i>

The prosecutor in this extract is investigating the source of drugs found in the defendant's luggage. In defence, the defendant denies his awareness of the drugs and then elaborates on the details (line 4). The interpreter, however, fails to provide a complete rendition. She fails to mention that the defendant saw the drug for the first time and that the defendant's friend would come to take the drugs later. This reduced rendition may be owing to the interpreter's poor short-term memory or, is likely to stem from her inability to appreciate the defendant's accent. According to Gong's findings (2013), most of the court interpreters in her survey rate African defendants' accent as the biggest challenge in performing interpreting tasks.

It may be true that most Chinese interpreters have not come across African-accented English before. They do not have chances to interact with English speakers from Africa outside the courtroom, nor do they receive any training to familiarise themselves with the way Africans speak English. Moreover, they have pressure and anxiety when working in the legal setting, which interferes with their interpreting performance. Some studies indicate that an interpreter will find it less difficult to interpret a non-native speaker of English if the speaker's mother tongue is familiar to the interpreter (Mazzetti, 1999; Basel, 2002). In the present research, however, the mother tongue of African defendants is divergent from that of Chinese interpreters and both are second language speakers of English. When defendants have to testify in a language in which they are not very competent, this may constitute language disadvantage (Powell & Hashim, 2011). When interpreters cannot comprehend and interpret defendants' utterances accurately, this leads to a danger that defendants' voice cannot be fully heard by trial participants, which could affect the decision-making of the case.

The issue of comprehensibility

Excerpt (4) shows several rounds of exchanges between a Nigerian defendant and an interpreter on one single question before the defendant can provide an answer that can be put into the trial record.

Excerpt (4)

01	J:	你以前有被判过刑吗?
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02		<i>Have you been sentenced before?</i>
03	I:	Did you (.) in the past (.) did you get any punishment (.) criminal
04		punishment because of committing a crime?
05	D:	Pardon↑
06	I:	Did you get any punishment because of committing any crime before?
07	D:	(4.0) You mean that I—
08	I:	Did you get any punishment before?
09	D:	OH ER OH have I ended up in police before?↑
10	I:	Yeah
11	D:	No no no in Nigeria I never end up in police before
12		((The defendant waves his hand))
13	I:	沒有
14		<i>No</i>
15	J:	你何时收到起诉书副本及翻译文本?
16		<i>When did you receive the copy of the indictment and the translated</i>
17		<i>version?</i>
18	I:	When did you receive the COPY of the indictment and the English
19		VERSION of the indictment?
20	D:	I don't understand
21	I:	When did you receive the [copy of the indictment?
22	J:	[根据记录是[XXX]

23		[According to the record it was [XXX]
24	D:	When did I receive the court letter↑
25	I:	Yeah
26	J:	本院2月份呃今年的2月28日呃时间是不是准确=
27		<i>This court in February this year uh 28th February this year uh is the</i>
28		<i>time correct=</i>
29	D:	=It was (.) it was last::
30	I:	On February 28th right?↑
31	D:	Yes 28th

The presiding judge makes an enquiry into the defendant's criminal record. Upon hearing the first rendition, the defendant utters '*pardon*' in a rising tone (line 5), which is an open-class repair initiator that does not locate the source of the problem (Drew, 1997). Although in the subsequent turn the interpreter repeats the question (line 6), the defendant is again uncertain of the meaning of the rendition, evidenced by his producing the understanding-checking marker '*you mean*' (line 7): an instance related to comprehensibility. It is after the interpreter revises the rendition from a complex sentence embedded with a clause into a simple, shorter form (line 8) that the defendant comes to capture the meaning of the prior rendition '*Did you get any punishment before*' and adds his own interpretation: '*have I ended up in police before*' (line 9). By uttering the discourse marker '*oh*' twice successively and loudly, he seems to have overcome his complete loss in translation. According to Schiffrin (1987), *oh* is an exclamation or interjection, a marker of information management. It marks a shift in

the speaker's orientation to information. In Excerpt (4), '*oh*' signals the defendant's some sort of understanding of the interpreted question, and introduces his reformulation (line 09), which is then affirmed by the interpreter's '*yeah*' in line 10.

In what follows is the judge's enquiry into the exact date when the indictment was served to the defendant. Again, the defendant fails to understand the translation at the outset (line 20). After hearing the simplified rendition, he comprehends the meaning of '*indictment*', shown by his rephrasing '*court letter*' (line 24).

What makes it hard for the defendant to understand the interpreter's utterances? One possible factor is the form of rendition. When the rendition is reformulated from a complex sentence to a simple one, the defendant has a better understanding of it. Twice as the defendant paraphrases the interpreted utterances, it suggests that he is unfamiliar with the way of expression produced by the interpreter, which may be associated with the accent of the interpreter. It is true that Chinese interpreters speak English in a way that is different from Nigerians do, for instance, in terms of intonation, pronunciation and use of vocabulary. And therefore, defendants from Nigeria may need to make great efforts to understand this unfamiliar type of English.

The source of the comprehensibility problem might also lie in the interpreter's use of '*punishment*'. The interpreter should use '*record*'—the usual expression of what the judge means—and the defendant may be more familiar with this expression than '*punishment*'. The interpreter should at least have used verbal variations of '*punishment*' or have tried to elucidate what is meant by '*punishment*'.

Another possible reason that could have made it hard for the defendant to understand the interpreter is that '*end up in police*' is a more common expression in his home country, and the word '*indictment*' is a legal term that might not have been in his daily vocabulary. Little studies are available on the English competence of these Nigerian defendants, but a survey conducted by the local police informs us of their educational background that 90% of the Nigerians under arrest are junior school graduates (Qiu, 2011). Though their educational level does not necessarily have a correlation with their linguistic competence, studies on English education in many African countries (e.g. Blommaert, 2008) show that because of the stratified educational system, only elites tend to speak normative English. We might therefore infer that: these Nigerian defendants may not have acquired knowledge of complex English sentences, a wide range of English vocabulary and usage, or have been exposed to other English varieties. When they have to converse with English speakers from other countries using expressions distinct from their habitual usage or with different pronunciation, they may encounter comprehension difficulty. In a survey conducted by a local newspaper on Africans in the city of M, many African respondents gave up doing interview in English because they could not understand or read English (Zhang & Zheng, 2014). It is also likely that '*indictment*' as a legal terminology is beyond laypersons' knowledge of juridical discourse. Added to the difficulty in understanding the interpreter is the intuitional constraint imposed on lay participants in the courtroom. Facing accusations, they are cautious of the consequences of the statements made in the courtroom. They may need time to think over the answer. What is more, these African

defendants, mostly with no prior experience of participating in Chinese trial, may psychologically feel pressured and tense in a foreign courtroom. All these factors complicate the communication, to the detriment of defendants' comprehension ability. These exchanges show that the interpreter lacks communicative ability to make herself understood to the defendant; it is the defendant who explains what the interpreter intends to convey.

In Excerpt (4), through rounds of exchanges with the interpreter, the defendant, drawing from the Nigerian English variety in his linguistic repertoires, eventually manages to overcome the intercultural communication difficulty. In Excerpt (5), however, the communication is not successful. Despite several attempts at meaning making between the interlocutors, in the end the Nigerian defendant expressly acknowledges his inability to comprehend the interpreter.

Excerpt (5)

01	P:	那么你帮别人接收这个邮件(.) 里面除了有这个非洲的烟之外(.)
02		还有其他物品吗?
03		<i>When you received this parcel on someone's behalf (.) inside it except</i>
04		<i>African cigarettes (.) was there anything else?</i>
05	I:	Are there any uh articles in the (.) mail uh (.) in the mail which
06		contained cigarettes which Ben asked you to receive?
07	D:	I don't understand—
08	I:	Are there any articles in the mail besides the African cigarettes which
09		Ben asked you to receive?
10	D:	I don't understand—
11	I:	Are there any articles in the parcel you received from him?
12	D:	Ben? =
13	I:	Yes
14	D:	I —
15	I:	Uh what I mean is that are there anything ELSE in the parcel which
16		you collect from Amy?
17		(2.0)
18	I:	Do you know whether there are any things in the parcel you received?
19	D:	(1.0) I don't understand—
20	I:	他说听不懂我问什么

21		<i>He said he didn't understand my question</i>
22	P:	嗯那你知道这个邮包内的这个非洲烟草有多少数量吗?
23		<i>Hmm do you know the quantity of African cigarettes in the parcel?</i>
24	I:	Uh::did you know how much African cigarettes are there in the
25		parcel?
26	D:	I don't know
27	I:	我不知道
28		<i>I don't know.</i>

The prosecutor's question concerns the defendant's awareness that there was something else inside the parcel except the cigarettes. In translating the Chinese word '物品' (thing), the interpreter refers to it as an 'article', an ordinary word with technical meaning in this given context. 'Article' usually means something written or a provision of a statute. But here, the interpreter adopts its less common meaning to refer to an unspecified thing. This technical meaning, however, can be demanding for the Nigerian defendant to figure out, either because of his educational level, his unfamiliarity with the interpreter's style of pronunciation or psychological pressure. The two renditions in lines 5-6 and lines 8-9 are both complex sentences, embedded with attributive clauses. The first rendition even contains two attributive clauses. The complicated syntactic structure poses an additional challenge to the defendant's listening comprehension. The interpreter, nevertheless, may not realise that her style of delivery can affect the defendant's understanding. Therefore, despite the interpreter's continual efforts in

repeating the renditions five times, during which she simplifies the syntactical structure, shortens the sentence, and replaces the word ‘*mail*’ with ‘*parcel*’, the defendant still fails to comprehend what she states. The only thing he can reply is ‘*I don’t understand.*’ Apart from the comprehensibility problem associated with ‘*article*’, the interpreter makes a constant mistake of using English present tense in the main clause when referring to past actions or state of affairs of the defendant in lines 05, 08, 11, 15, 18. The interpreter’s wrong rendition of time—maybe due to a transfer from Chinese grammar—might also contribute to the communication breakdown in this context.

The issue of interpretability

In the above two excerpts, the defendants have difficulties in figuring out the meaning of the interpreted utterances, which is the issue of comprehensibility in Smith’s term (1992). Excerpt (6) illustrates an instance of interpretability problem that arises from the Ghanaian defendant’s failure to comprehend what answer he is expected to provide, which is to do with Chinese legal culture that the defendant is not aware of. The presiding judge informs the defendant of his lawful rights that concerns submission of new evidence and witnesses. Then, the judge questions the defendant as to whether he has any new evidence to contribute. When the interpreter translates this question for the defendant, he answers ‘*yes.*’ This reply is not what the judge expects, for in most cases the expected answer would be in the negative. In this context, the notification of the right, which is a formulaic expression, is done to serve the due-process requirement, rather than to require substantive explanation from the defendant. So, when the

defendant gives a positive answer, it is contrary to the expectation of the judge, who assumes that the defendant has misunderstood the interpreted question. Therefore, the judge instructs the interpreter to explain to the defendant that the question is not intended to seek his opinion of defence but to inform his right to submit new evidence.

Excerpt (6)

01	J:	被告人在法庭审理过程中(.)可以提出新的证据(.)申请通知新的证
02		人到庭(.)调取新的证据(.)重新鉴定或者勘察(.)检查(.)被告人听清
03		楚了吗?
04		<i>The defendant during the court hearing (.) is entitled to present new</i>
05		<i>evidence (.) request new witnesses to be summoned (.) new evidence to</i>
06		<i>be obtained (.) a new expert evaluation or an inquest to be made (.) a</i>
07		<i>re-examination to be made (.) defendant is that clear?</i>
08	I:	During the trial the defendant has the right to present new evidence (.)
09		summon new witnesses to the court (.) ask for new evidence to be
10		obtained (.) request new expert evaluation or examination to be made
11		(.) defendant are you clear?
12	D:	Yes
13	J:	你本人有没有新的证据提出的?
14		<i>Do you have new evidence to submit to the court?</i>
15	I:	Do you have any new evidence?
16	D:	Yes

17	I:	有
18		<i>Yes</i>
19	J:	你要跟他强调(.)是证据(.)如果他有什么辩解的话(.)等会有时间给
20		他发表意见
21		<i>You should emphasise to him (.) it is about evidence (.) if he has any</i>
22		<i>defence (.) later he is given time to state his opinion</i>
23	I:	It must be evidence and not statement (.) you enjoy the right to state it
24		later (.) now do you have any new evidence?
25	D:	Do I have anything to say?
26	I:	Evidence (.)do you know evidence?
27		(0.5)
28	I:	没有
29		<i>No</i>

Here, the communication challenge is associated with the defendant's lack of knowledge of the Chinese legal procedure, a kind of erroneous understanding that is often found in lay-legal communication and which may come from cultural rather than linguistic barriers. Lay participants usually do not know the specialised legal rules that operate in the courtroom. They may thus behave or speak in a way that differs from the norm or judicial expectation. In this example, the defendant has no knowledge of the ritualistic purpose behind the formulaic expression in this context. He lacks the cultural awareness that the message is intended to notify him only, to serve procedural rather

than substantive function, and he is not expected to provide further elaboration. The communication failure in this extract is ascribed to neither the defendant's failure to recognise a word, nor his incomprehension of an expression. It falls into the category of interpretability, because the defendant could not figure out the illocutionary force of the utterances, and therefore fails to offer an expected answer.

African defendants' inability to comprehend the interpreter's rendition can severely place them at a disadvantage in their participation in the trial. Without fully understanding the interpreted utterances, they are not capable of providing accurate answers to the questions, thus failing to clarify unclear facts, to articulate their motive, and to argue for their own benefit.

Discussion on multiple bases for understanding failure

Many previous studies (e.g. Berk-Seligson, 2002; Hale, 2004; Wadensjö, 1998) on interpreting in the legal process focus on developed countries or 'the core' in the world system (Wallerstein, 1974), which have a history of immigration that has continued in the course of globalisation. This mode of globalisation often involves elite migration from the periphery to the core. Successful immigration to the developed world typically demands 'early acquisition and literacy instruction' (Han, 2013, p. 84). In the core, language-related matters in the courtroom have been dealt with for a long time in a comparatively mature way, often with regulation on the qualifications and certification of interpreters. Due to the permanent nature of immigration, interpreters and defendants may be of the same or close ethnicity. Ethnic commonality enables interpreters to

acquire a better understanding of the communication difficulty defendants experience in the courtroom, which facilitates mutual understanding between two parties.

In the Chinese criminal courtroom, however, defendants and interpreters enter the interactional space with highly divergent socio-cultural, ethnic and linguistic backgrounds (Maryns, 2005). Transient nature of African migration in the form of low-end globalisation does not require migrants to acquire elite language competence before they move to China. In the interaction with legal professionals, due to unavailability of interpreters in African indigenous languages, African defendants are compelled to fall back on English, which may not belong to their major linguistic repertoires. Even if English belongs to some of their major linguistic repertoires, the English varieties spoken by African defendants are significantly diverging from the Standard English varieties that Chinese interpreters are familiar with. When their linguistic sources are ‘misrecognised’ or ‘displaced’ in a geographically and linguistically remote space (Maryns, 2005, p. 309), they may reduce the functionality in the ELF interaction.

The difficulty in achieving mutual understanding that African defendants and Chinese interpreters have in their ELF communication seems to reflect a language ideology of homogeneity that underlies the court interpreting practice in Chinese courts. This ideology presupposes that English is a single homogeneous language with no variation and accordingly all English speakers are treated as speaking the same language without linguistic differentiation. It seems that many Chinese legal professionals do not have a concept of linguistic variety and often overlook linguistic variations (Du, 2015). They assume that African-English speakers and Chinese-English

speakers speak the same form of English and have few communicative barriers. They seldom notice or take measures to address deviations of the non-standard English variety (predominantly Nigerian English in my data) from Standard English varieties or the difference between the ways that African defendants and Chinese interpreters speak English. This is evident in a lack of institutional arrangement for both parties to meet and familiarise themselves with the other party's way of speaking. There is an assumption that interpreters are able to communicate with African defendants without any obstacle. The lack of training for interpreters to get familiar with African English before the trial becomes a big obstacle to interpreting throughout the legal process.

In addition to having difficulties in understanding the defendants' English, Chinese interpreters also have problems in making themselves understood in English to defendants, for instance, the rendition of the legal term '*indictment*' in Excerpt (4), the mistaken use of English tenses and the rendering of '*article*' in Excerpt (5), the disregarded verbalisation of the expected illocutionary force in Excerpt (6)—all these deficiencies demonstrate the communicative inability of Chinese interpreters to non-Mandarin-speaking defendants. They fail to adapt the professional language of the court to the everyday oral English competencies of the African migrants in the courtroom. Very often, it is the African migrants that bridge the gap not only between their language and the language of the interpreter, but also between their daily oral language and the professional language of the court. This, as Rehbein (2013) argues, is a general problem of multilingual communication in institutions where agents of judicial

institutions as judges, lawyers, prosecutors possess professional knowledge while clients as defendants lack such knowledge and are thus placed at a disadvantage.

African defendants are also expected to understand interpreters without any difficulty and to speak a form of English that is fully comprehensible to interpreters, but neither of these things is often possible. Interpreters that I have talked to consider African English pronunciation and intonation obscure and unintelligible. Kurz (2009) discovers that novice or untrained interpreters are often greatly disturbed by non-native English speakers' accents and therefore cannot provide a satisfactory rendition. As some of the previous excerpts show, Chinese interpreters often have to make great efforts to make sense of what Nigerian defendants say. Communication breakdown arising from incomprehension prevents defendants from full participation in the trial and consequently impacts their right to a fair trial.

Conclusion

It is a generally recognised legal principle that any person is entitled to a fair trial in face of criminal charges. For defendants, speaking languages not used by the court, access to interpreting is a procedural safeguard to the right of a fair trial (Namakula, 2012). It is only with the assistance of interpreters that defendants manage to communicate their opinions on the case, defend themselves and interact with other trial participants. However, to achieve this goal, defendants have to be able to communicate successfully with interpreters. This successful communication entails two aspects: defendants succeed in understanding the interpreted renditions and meanwhile manage

to make their utterances understood by interpreters who then convey the voice of defendants to other trial participants (Du, 2016). Moreover, court interpreting functions to safeguard language equality before the law: to remove language barriers encountered by linguistic minorities so that they can be placed in a position similar to that of a defendant who does not need such language support (Hale, 2004).

In the current research on Chinese courts, it is discovered that court interpreting service does not function adequately to guarantee African defendants' full participation in the hearing. Interpreters and defendants have difficulty in achieving mutual understanding when they have to use English as the *lingua franca*: neither of them speaks English as their first language; they speak different English varieties and they are not familiar with each other's way of speaking English. They have to engage in constant repetitions and explanations to express themselves and decoding each other's meaning, and despite the efforts, sometimes communication failure still occurs. Consequently, defendants cannot fully participate in the trial because they have very limited access to the information communicated in the courtroom, and their defence and opinions cannot be fully conveyed to trial participants, which impairs their right to equality and fair trial.

To improve mutual understanding between defendants and interpreters, a legal framework on court interpreting needs to be formulated: a system of examination and certification has to be designed carefully to ensure interpreters' competence in doing court interpreting; pre-trial training is mandatory to improve interpreting skills in handling speakers of different English varieties; a language competence evaluation

could provide information regarding defendants' capacity in courtroom exchanges; meetings between defendants and interpreters can be arranged to facilitate their communication; essential information on criminal trials can be provided to defendants to assist their participation in the court hearings; and manuals on key issues of working with interpreters and foreign-language defendants should be offered to judicial officers to prepare them with knowledge of the complexity of intercultural communication. When a defendant speaks an English variety unintelligible to the interpreter, relay interpreting can be arranged in which translators from the same country as the defendant is to interpret this English variety into Standard English which is then interpreted into Mandarin by the Chinese interpreter, which can improve accuracy and completeness in information transference. Additionally, it is of great importance that the English education, and interpreter training in particular, should include an introduction into the world's Englishes and ELF misunderstandings, for instance, in relation to intelligibility or pragmatic competence (e.g. Berns, 2008; Seidlhofer, 2004, 2005; House, 2013). Court interpreters should also receive an education in linguistic-pragmatic competence, including practices of elucidating and explaining juridical and professional languages into everyday oral talk of English-speaking migrant clients.

The current research is only based on data collected in one city, and therefore the findings cannot claim representative and may not be applicable to other locations. To have a bigger picture of how court interpreting is practised in China, a larger sample of data across different regions should be collected. Moreover, because of the inability to interview participants in the trial, I could not obtain their own interpretation of the

discourse. Therefore, in some cases, I can only offer my conjectures. Because of the limited space, this paper focuses on linguistic differences as the major sources of trouble in ELF interaction and does not deal with other factors leading to communication breakdown. In spite of these limitations, this paper has its significance as it provides an ethnographic-based empirical study on multilingualism in the legal space by exploring the communicative difficulties African English-speaking defendants encounter in the Chinese courtroom. The study has proposed some constructive advice on how to enhance mutual understanding between speakers of different English varieties, which may promote judicial awareness of safeguarding the language-related procedural right in practice.

Disclosure statement

No potential conflict of interest was reported by the author.

Notes

1. To maintain anonymity, names of exact courts are not revealed and all information relevant to the identity of courts and litigants has been changed.
2. I accessed these live trials from the official platform (<http://ts.gzcourt.org/cn>) in the year from September 2014 till September 2015. Later in 2015 when I revisited the website, all the bilingual hearings were not accessible any more, even though the webpages of some cases still showed brief information of the facts.

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Appendix: transcription conventions

- D defendant
- I interpreter
- J judge
- P prosecutor
- cut-off of the prior word or sound
- (.) untimed pause
- (1.0) timed pause in seconds
- [overlapping or simultaneous utterance
- = when there is no interval, no discernible pause between adjacent utterances
- WORD volume louder than surrounding speech

(()) non-verbal or other contextual information

↑ speaking in a rising tone

[XXX] inaudible or unclear utterances

word:: lengthening