Land Conference 2011
Conference Theme:
Mineral Rights in Trinidad and Tobago:
Issues, Challenges and Recommendations

Gerald Lewis and Lou-Ann Baptiste

Background

The history of oil exploration in Trinidad can be traced to the 19th century. The first successful oil well was drilled in 1866 by Walter Darwent at Aripero. Commercial oil production began in 1908. Oil production fluctuated over the years - during the 1940's and 1950's, it averaged about 50,000 barrels of oil daily (bopd). In the 1960's production peaked at 183,298 bopd; in the early 1970's it dropped to 130,000 bopd. In the 1977 '78 period production peaked again at an all time high of 230,000 bopd. At present crude oil production in Trinidad and Tobago averages 170,000 barrels of oil per day (bopd) with the production on land being approximately 60,000 barrels. It is a fact that the production of oil is the key player in the economy of Trinidad and Tobago.

History of Mineral Rights Ownership

Prior to 1904, in Trinidad and Tobago, when the Crown (State) granted lands to private land owners it did not reserve for itself the mineral rights to such lands. Thus such mineral rights became privately owned by the grantee and they enjoyed the benefits of the minerals below their lands.

However, subsequent to 1904, the State upon granting lands began retaining for itself the rights to the minerals. This practice has resulted in a state of affairs where a significant number of mineral rights in the country are privately owned while simultaneously such rights in other lands are owned by the State.

Accordingly, this situation characterizes Trinidad and Tobago as one of few countries in the world where the mineral estate can be privately owned and is not wholly owned by the State. Examples of other countries are parts of the USA, Canada and Australia.

The map below shows the situation in the southern part of Trinidad where the oil-mining rights of both the State and private mineral owners in the acreages under Petrotrin’s control is shown. It is vital to note, the mineral right owners are not known for all lands.

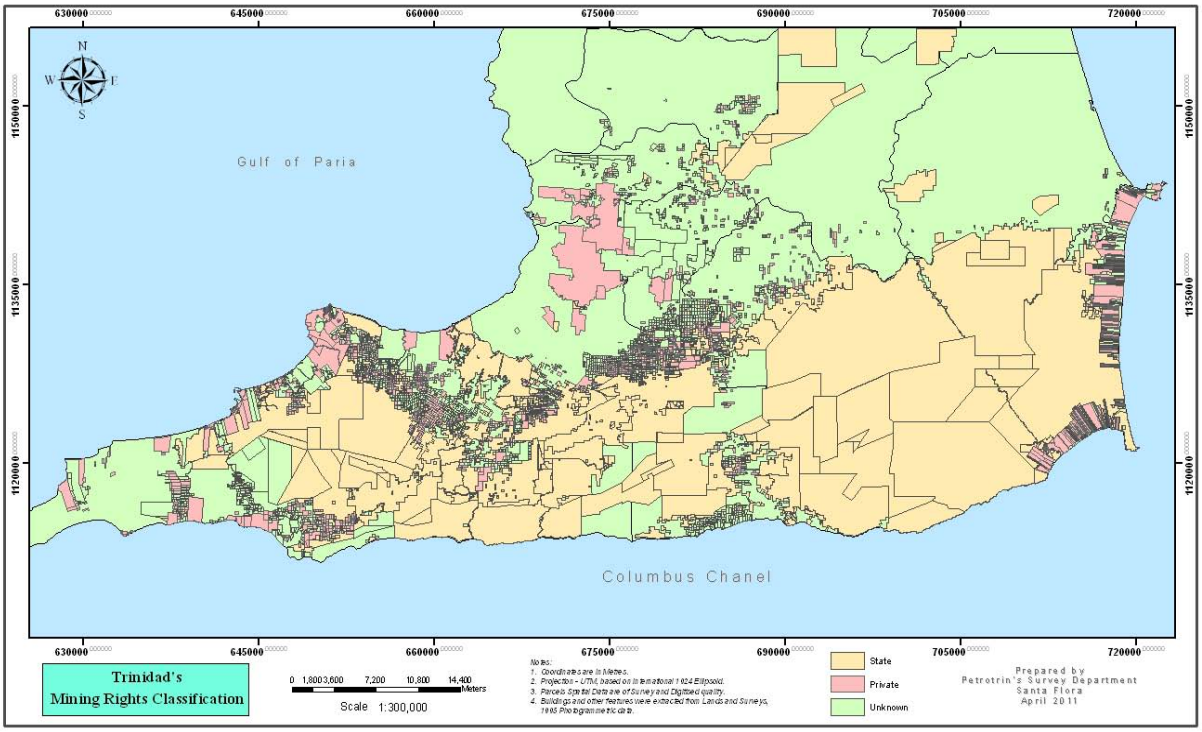

Figure 1. Overview of Mining Operations

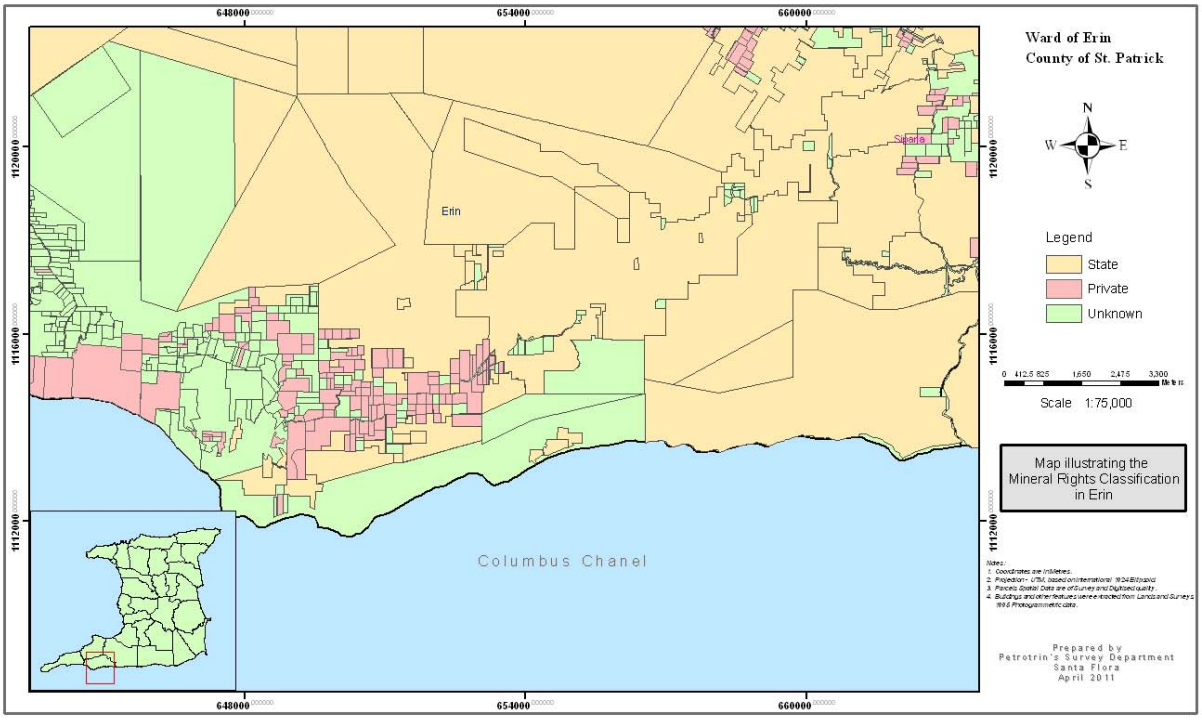

Figure 2. Erin

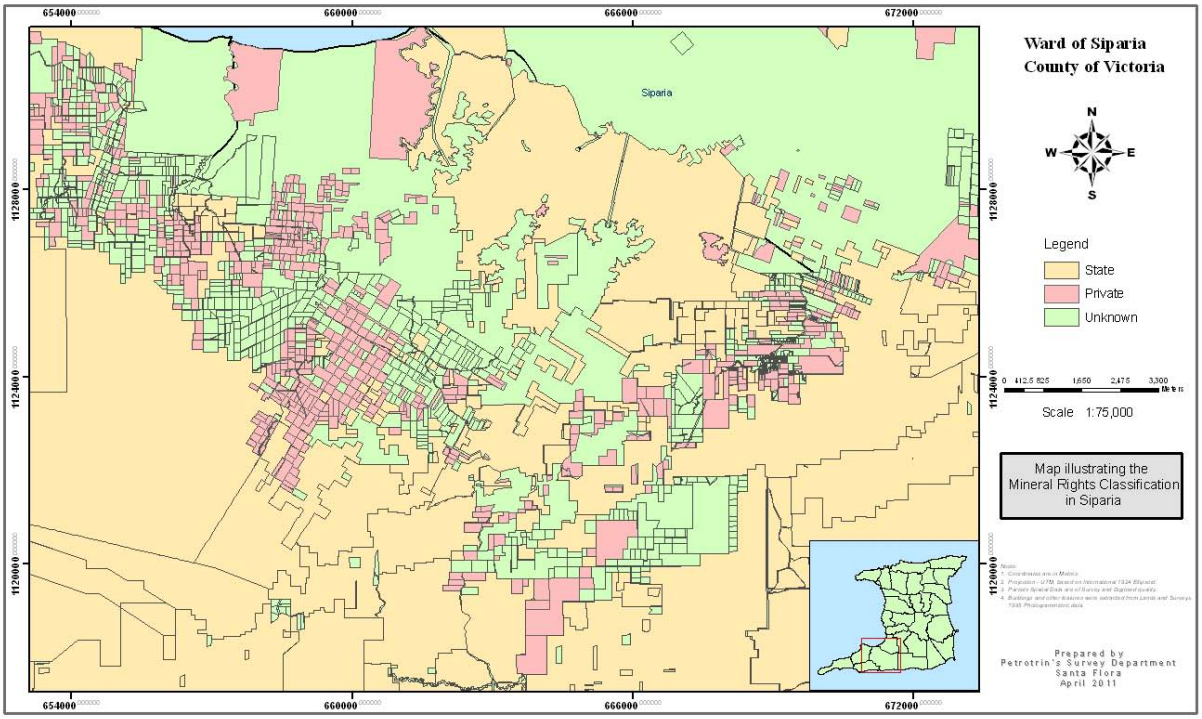

Figure 3. Siparia

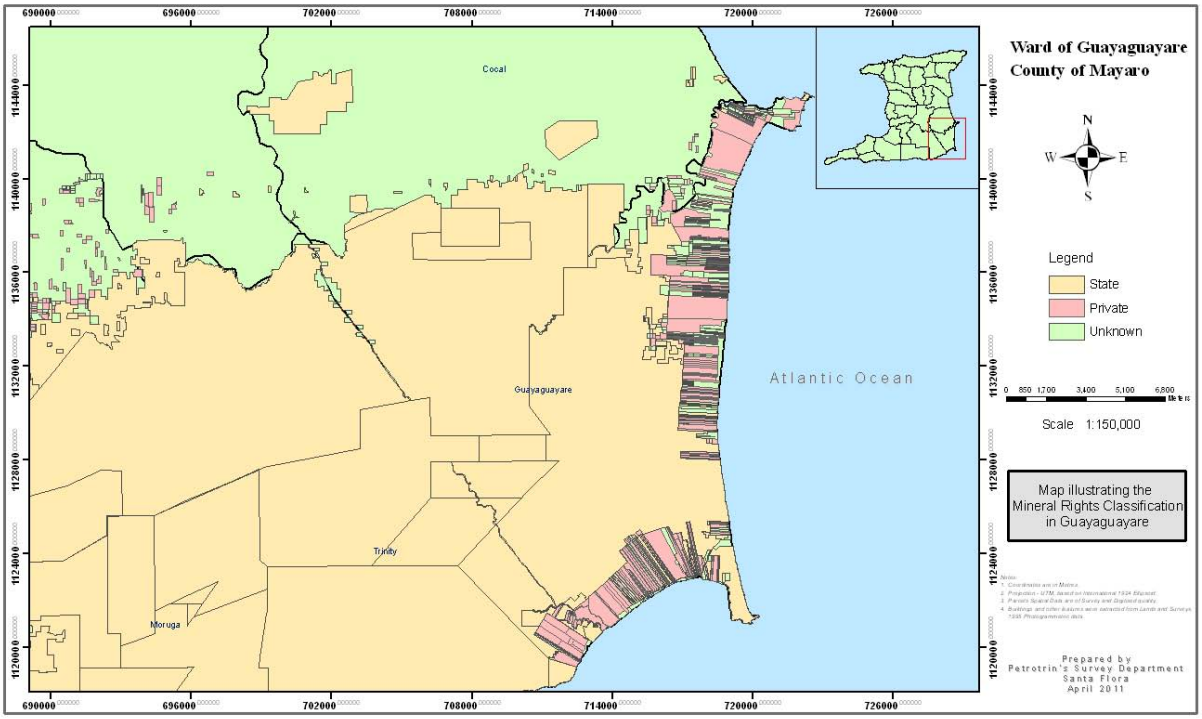

Figure 4. Guayaguayare

ISSUES INVOLVING THE SURFACE AND MINERAL ESTATES

In Trinidad and Tobago, the mineral estate is a separate interest in land that can be severed from the surface estate. The severance generally occurs in one of two ways. Either the landowner sells the minerals and retains the surface, or more commonly, the landowner sells the surface and retains the minerals. If the seller fails to reserve the minerals when selling the surface, the buyer involuntarily receives any mineral interest the seller owned at the time of conveyance.

Whether severed or united, **the mineral estate dominates**. The surface estate exists for the benefit and use of the mineral owner. The mineral estate would be of no value if the mineral owner could not enter upon the surface for exploration and production of the minerals. Therefore by nature of the law, the holder of a mineral right appears to have a superior right to that of the surface owner. The mineral right owner is referred to as the one with the dominant estate in the land. Minerals cannot be extracted without disturbing the surface of land, and the mineral rights holder can do whatever is requisite to extract the minerals. Mineral rights ownership grants the owner the right to use as much of the surface as is reasonably necessary to access the minerals and the right to receive royalties.

Mineral Rights Leases

-In the petroleum industry in Trinidad and Tobago due to the limitation in size of the acreages, costs and other technical and financial requirements for obtaining a Petroleum Exploration License, many private mineral rights owners remain incapable of executing their right to exploit the minerals. Consequently, oil companies to which these production licenses are granted enter into lease agreements with the mineral rights owners within the areas granted for exploration.

-These leases have historically been for periods of thirty (30) to thirty-five (35) years with options to renew for similar periods.

-The rental rates for maintaining the lease are usually small, for example, $50.00 per acre per annum, while the royalties payable range between 6% to 12% of the profits on produced oil.

It should be noted that the rent paid under a mineral lease, unlike a surface lease, does not grant exclusive occupation of the surface to the oil company. Instead, it is merely a rental for the exclusive right to the minerals during the period of the lease. The surface owner is expected to utilise any portion/s of the surface of which the oil company is not in occupation.

-In Trinidad and Tobago the mineral rights owner has the legal right to enter upon lands and occupy that portion of the surface that is reasonably required for extracting the minerals. He pays only for damages to the surface and a nominal rent for the continued occupation of the area occupied. No specific legislation exist that protects and regulates the rights and relationship between the dominant mineral rights owner and the subservient surface owner.

-In other jurisdictions such as selected states in the USA and Canada, certain common law practices and specific legislation regulates the relationship between the mineral and surface rights owners. The surface owner's rights are therefore protected by statute in these jurisdictions.

CHALLENGES INVOLVING MINERAL RIGHTS

1. Lack of awareness by the public of the superior right of the mineral Rights Owner

In Trinidad and Tobago, the surface owner, in most instances, is oblivious to the fact that some other entity may have a superior right to the sub-surface of his parcel of land. More so, he is more often than not unaware of the power of this said entity to exercise such right over his land. The primary concern of the surface owner is simply to use and enjoy the surface. He usually gives little or no thought to the inclusion or exclusion of the

minerals at the time of purchase because the likelihood of mineral activity in the area may appear to be nil. However, implications may later arise by virtue of his owning or not owning the mineral rights.

2. **Absence of a Register of Mineral Rights**

-Mineral rights ownership are presently registered under the Real Property Ordinance or the Registration of Deeds Ordinance either as a separate Title document where the minerals only are owned, or registered as a single or separate document where the minerals and surface interest belong to the same entity.

-No separate register of mineral rights exist nor does the ownership of mineral rights attract any form of taxation.

Prior to 1904, the majority of mineral rights in lands were transferred under the Deed Registration System. This system of Registration has its inherent defects such as vague parcel descriptions, inaccurate acreages without the benefit of survey plans to name a few. Grave difficulties arise even up to present to accurately and timely determine the ownership of mineral rights of many tracts of land.

-Significant cost and time is expended to ascertain the ownership of unknown lands, the process adopted is to trace the title – sometimes as many as three or four generations back. This involves relying on old conveyances and poor quality plans. Often, the documents of title are incomplete.

3. Inability to exploit potential reserves

- In the absence of a known mineral owner, the right to exploit cannot be executed. Thus as a result of the amount of not only money but also time e expended, vast tracks of lands with possible oil reserves remain unexploited and hence potential benefits to both oil explorers and the State are squandered.

4. Limitations of the proposed legislation

The three pieces of legislation proposed to address the challenges involving land tenure in Trinidad are very silent on the aforementioned issues involving mineral rights .

They include:

1) The Land Tribunal Act2000
2) The Land Adjudication Act-2000
3) The Registration of Title to Land Act 2000

Mineral Rights is only referred to in The Registration of Title to Land Act 2000 wherein it states that the Registrar "**may** create an interest folio in respect of mines or minerals in or underlying any land registered under this Act in this section referred to as the surface lands..

Changing " may" to "**shall"** would definitely have the required effect.

RECOMMEDATIONS

1. Creation of a Register for Mineral Rights

This paper highlights the inherent need for the development of a Register of mineral rights in Trinidad and Tobago. The development of such a Register should coincide with the implementation of three aforementioned Acts consequently saving the State tremendous time, money and other resources.

Such a Register will provide a record of all mineral rights owners which can act as a catalyst for exploitation and production activities. One cannot manage what one does not know.

To develop and maintain such a Register the State can implement a taxation system to ensure that it is current with regard to such rights and even to gain revenue.

In retrospect, the fact that there are still unknown mineral rights owners lends itself to the realization that a lack of a respective registrar is an impediment to development.

2. Introduction of Legislation to protect Surface Owners Interest

The rights of the surface owner are subject to that of the mineral rights owner and it has become custom for the surface owner to be deprived of enjoyment of the surface for lengthy periods of time at a small rent for surface occupation by the mineral rights owner.

The mineral rights owner pays no rent or taxes while he holds on to legal documents that stand from generation to generation. Consequently, during the tenure of a lease, the mineral lessee enjoys the same rights to use the surface as the surface owner. This can be deemed as unwarranted and perhaps should be an impetus for the State to review such and arrive at a more equitable status quo: one where the rights granted to the mineral rights owner as opposed to the surface owner are modified to ensure a synergy is achieved between these two competing interests.

Trinidad and Tobago can study cases in certain parts of the USA and Canada where attempts through legislation such as the "Model Surface Use and Mineral Development and Accommodation Act" have been made to better treat with the rights of the surface owner and thus mimic and model its own legislation for local use.